Lex Mercatoria Rediviva:

OR, A COMPLETE

CODE OF COMMERCIAL LAW.

BEING A

GENERAL GUIDE TO ALL MEN IN BUSINESS;

WHETHER AS

TRADERS,	*INSURERS,*
REMITTERS,	*BROKERS,*
OWNERS,	*FACTORS,*
FREIGHTERS,	*SUPERCARGOES, or*
CAPTAINS,	*AGENTS.*

WITH AN ACCOUNT OF OUR

MERCANTILE COMPANIES; OUR COLONIES AND FACTORIES ABROAD; OUR COMMERCIAL TREATIES WITH FOREIGN POWERS; THE DUTY OF CONSULS, AND OF THE LAWS CONCERNING ALIENS, NATURALIZATION, AND DENIZATION.

TO WHICH IS ADDED,

A SKETCH OF THE PRESENT STATE OF THE COMMERCE OF THE WHOLE WORLD;

DESCRIBING THE

MANUFACTURES and PRODUCTS of each particular Nation; with TABLES of Correſpondence, and Agreement of their reſpective COINS, WEIGHTS and MEASURES.

ALSO THE

NET IMPORT DUTIES PAYABLE IN IRELAND; AND DUTIES ON GOODS, WARES AND MERCHANDIZE, IMPORTED INTO THE UNITED STATES OF AMERICA.

COMPILED FROM THE WORKS OF THE

MOST CELEBRATED BRITISH AND FOREIGN COMMERCIAL WRITERS.

The Whole equally calculated for the Information and Service of the MERCHANT, LAWYER, MEMBER of PARLIAMENT, and private GENTLEMAN.

BY THE LATE *WYNDHAM BEAWES*, ESQ.

HIS BRITANNIC MAJESTY'S CONSUL AT SEVILLE AND ST. LUCAR.

THE SIXTH EDITION,

CONSIDERABLY ENLARGED AND IMPROVED,

BY *THOMAS MORTIMER*, ESQ.

FORMERLY HIS MAJESTY'S VICE-CONSUL AT OSTEND.

IN TWO VOLUMES.

VOL. I.

DUBLIN:

PRINTED FOR JOHN RICE, COLLEGE-GREEN;

AND SOLD BY

H. AND P. RICE, No. 50, MARKET-STREET, PHILADELPHIA.

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From the EDITOR of the laſt, and of the preſent EDITION.

THAT candour and liberality, which has ever diſtinguiſhed the *Britiſh* and *Iriſh* nations, will render all apology unneceſſary, for the liberty the Editor ventures to take, of glorying in the very favourable reception which has been given to the laſt edition of this valuable work. Had it been his own original production, he could not more ſenſibly have felt the ſatisfaction this circumſtance affords him. Delicacy, however, in that caſe, might have confined him to a very conciſe, grateful acknowledgement; but as the chief merit of every edition muſt be founded on the intrinſic value of the extenſive plan projected and carried into execution by the late venerable Mr. *Beawes*; he may be allowed more freely to expatiate on the many advantages which the mercantile world, and the gentlemen of the long robe, have derived from it.

Being a complete commercial code, it has afforded uſeful information on all ſubjects of diſpute reſpecting maritime and trading concerns; and has occaſioned many amicable compromiſes and adjuſtments, by arbitration and references, without entering into tedious and expenſive litigations; but when law-ſuits have been unavoidable, it has equally ſerved as a guide to able counſellors, and to learned judges on the bench, who have frequently quoted the precedents it furniſhes of the cuſtom of merchants, and of the deciſion of former courts. After the death of Mr. *Beawes*, the Proprietors, encouraged by a continual demand for the work, grown into confirmed reputation, took every ſtep in their power to improve this NEW EDITION to the preſent time; by inſtructing their Editor to make ſuch valuable alterations and additions as the revolutions in commercial affairs; the modern deciſions in our courts of law; and the increaſe of able commercial writers, rendered eſſentially neceſſary.

The extenſive circulation and general approbation of the work in all parts of *Europe*, in *Aſia*, and the *United States of America*, made it the Editor's ardent wiſh that a new impreſſion might be called for.

To this edition then, we have been enabled to add, not only thoſe and other public papers, ſuch as the treaty with *Spain*, &c. but likewiſe a complete tariff of the duties on importation and exportation, drawbacks, bounties, &c. which could not even be attempted in any former edition, on account of the complex and perplexing mode of collecting the cuſtoms, before the conſolidating act took place. Alſo, the import duties payable in *Ireland*; and the duties payable on goods, wares, and merchandize, imported into the United States of *America*.

With

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With reſpect to ancient documents of authority, the forms of which have not undergone any alteration whatever, they are preſerved as they ſtood in the original, being teſtimonials of the care and attention of the deceaſed Author, and memorials of the great number of years, that his book has been held in deſerved eſteem.

Some pages of obſolete matter have been rejected, and new and intereſting ſubjects have been introduced, which will be eaſily found in the general Contents, and in the Index. Unwilling, therefore, to deſcend to particulars, we ſhall only mention the laſt regulations of the corn trade, and the lateſt deciſions upon that moſt important concern, the circulation of *Accommodation Bills* of *Exchange*, with fictitious indorſements.

To the liſt of modern commercial writers, mentioned in the laſt edition, as having afforded great aſſiſtance to the Editor, he has now to add the new edition of *Cooke's Bankrupt Laws*. *The Reports of Caſes adjudged in the Court of Chancery by William Brown, Eſq*; down to *Trinity Term*, 1791. *Kyd's Treatiſe on the Law of Bills of Exchange* and *Promiſſory Notes*. *The Term Reports*, &c. From all theſe complications, he has extracted whatever was eſſential to complete his own; and always with a candid acknowledgement of the obligation; a fair practice which he takes this opportunity to recommend to thoſe, who have moſt copiouſly borrowed from the every edition of *Lex Mercatoria*, without any reſtriction on the part of its reſpectable proprietors.

A new arrangement was judged neceſſary with reſpect to the *Cuſtoms*, which are tranſpoſed to the cloſe of the work, with a view to annex further regulations of government, which have been daily expected.

T. M.

THE

THE

CONTENTS.

AN historical deduction of trade and commerce, from their origin Page 1

Of merchants, whether natives or foreigners; their character; some directions for their prudent conduct; and an abstract of the laws now in force concerning them: particularly those relating to the exportation of corn 29 *to* 43

Of factors, supercargoes, ships' husbands, and other agents 44

Of ships, owners, captains, and sailors, with abstracts of the laws in force prohibiting or permitting the exportation and importation of sundry merchandise; and all the rules and regulations to be observed in shipping, and unlading them 48 *to* 65

Of fisheries, &c. 66

Encouragement of British-made Sail Cloth 71

Laws in Force prohibiting the exportation of live sheep, wool, &c. 75

Of freight, charter-parties, bills of lading, demerage, and bottomry 128

Of ballast 139

Of pilots, lodesmen, or locmen 143

Of wrecks, viz. flotsam, jetsam, and lagan 152

Of salvage, average, or contribution 157

Of British ports, havens, lighthouses and sea marks 162

Of foreign ports 218

Of light-houses 220

Of letters of marque and reprisal 223

Of privateers or capers 230

Of pirates, or sea rovers, and barratry 250

Of convoys and cruizers 261

Of captures, condemnations, and appeals 263

Of bills of health and quarantine 264

Of embargoes, or restraints of princes 268

Of protections, passports, and safe conducts 269

Of leagues and truces 270

Of proclamations for war and peace 271

Of the Admiralty 273

Of the jurisdiction of the Court of Admiralty 274

Of consuls 287

Of freedom of navigation 294

Of insurances 298

Enumeration of causes which render policies of insurance null and void 302

Cases of warranty to sail with convoy 318

Of re-assurance and double insurance 330

Of bottomry and respondentia-bonds, as connected with cases of insurance 332

Miscellaneous observations and singular circumstances respecting insurances 335

Of foreign insurances 341

Of arbitrators, arbitraments, arbitration-bonds, and awards 357

Of aliens, naturalization, and denization 365

Of banks 371

Of bankers 396

Of usury 399

Of contracts, bonds, and promissory notes 404

Of bills of exchange 413

Of the loss of bills of exchange 438

Of

CONTENTS.

	Page
Of brokers	464
Of the par of monies	469
Of arbitrations of exchange	476
Of bankruptcy, all the laws of, with new cases to 1791	499
Of the general commerce of the world	588
Of Great-Britain	589 *to* 608
Ireland	608 & 715
Of the commerce between Great-Britain *and* France	614
Treaty of commerce with France	615
Explanatory convention	626
Of the commerce between Great-Britain *and* Holland	629
Germany	630
Spain	631
Portugal	640
Great-Britain's *trade with* Italy, *including under this denomination* Venice, Naples, *and* Sicily, Genoa, Leghorn, Ancona, *&c.*	643
Of the trade carried on by Great-Britain *with* Turkey *and* Barbary	644
Africa	648
Asia	659
Of the East-India *Company*	660 *to* 667
Of the South-Sea *Company*	667
Of the Hudson's Bay *Company*	668
Of the general commerce of America *with* Great-Britain *and other nations*	669
Treaty of peace and friendship between his Britannic *Majesty and the* United States *of* America	ib.
Georgia	674
Carolina	677
Virginia	678
Maryland	679
New-York	ib.
Pennsylvania	680
The Jerseys	681
New-England	ib.
Nova-Scotia	683
Cape Breton *and* St. John	685
Canada	ib.
Barbadoes	686
St. Christopher's, Nevis, *or* Mevis, *and the other* Caribbee *islands*	687
Jamaica	688
The Lucayos, *or* Bahama *islands*	689
The Bermudas, *or* Summer *islands*	ib.
Newfoundland	691
An account of the trade between Great-Britain *and* Russia, *carried on by the* Russia *Company*	ib.
Of the general commerce of Great-Britain, Denmark, *and* Norway, Sweden, Poland, Prussia, *and the* Austrian Netherland	693, 694
Of Ireland	694
France	700
Spain	718
Portugal	724
Italy	727
Genoa	729
Rome	733
Florence *and* Leghorn	734
Milan, Modena, Lucca, Parma, *and* Verona	735
Africa	748
Asia	765
America	823

Of

Page

Of the Levant *trade, and that on the coaſt of* Barbary — 736 & 747
Of the trade of Cairo, Alexandria, *and* Roſetta *in* Egypt — 742
Of the trade of the Archipelago — 746
Of the trade of the African *coaſts* — 750
Of the trade of the African *iſlands* — 761
Of the trade of the Canary *iſles* — 763
Of Arabia — 766
Of the trade of the gulf of Perſia — 768
Of the inland commerce of Perſia — 770
Of the commerce of Great Tartary — 773
Of the general trade of the Eaſt-Indies — 778
Of the commerce of the coaſts of India *and* Malabar — 784
Of the commerce of China — 797
Of the trade of the iſlands of Aſia — 806
Of the trade of Sumatra — 812
Borneo, Crimati, *or* Crimatia — 813, 814
Of the Molucca, *or* Molucque *iſlands* — 814
Of the iſles of Banda — 816
Of Amboyna — 817
Of the Philippines, *or* Manillas — 818
Of the Ladrones, *or iſles of* Thieves — 820
Of the iſles of Japan *or* Japon — ib.
Of the trade of Jeſſo — 822
America, *geographical and political diviſion of, and general trade* — 823
Of the trade on the coaſts of Spaniſh America *in the North ſea* — 825
Of the trade of the Spaniſh American *coaſts in the South ſea* — 827
Of the trade of French America — 832
Commerce of Portugueſe America — 833
Of the trade of Holland *with the North of* Europe — 834
Concerning the trade of the North *and the* Baltick *ſea* — 837
Of the commerce of Denmark — 838
Concerning the Sound — 839
Of the trade of Norway — 848
Of the trade of Courland, Pruſſia, *and* Pomerania — 855
Of the commerce of Livonia, *and its principal cities* — 857
Of the commerce carried on at Archangel, *and other parts of* Ruſſia — 858
Of the trade of Sweden — 860
Of the commerce of Switzerland *and* Geneva — 863 *to* 870
A general account of the weights, meaſures, and coins in all parts of Europe — 870
Of the weights uſed throughout Great-Britain — ib.
Of thoſe uſed in France, Holland, Coningſberg, Dantzick, Elbing, Stetin, Lubeck, Breſlaw, Hamburgh, Bremen, Naumburgh, Erfort, Bergne, Cologn, Ghent, Bruſſels, Malines, Bruges, Liſle, St. Malo, Bayonne, Genoa, *and* Rome — 871, 872
Leghorn, Florence, Lucca, Palermo, Venice, Bologne, Bergame, Naples, Smyrna, Conſtantinople, Aleppo, Tripoli, Seyda, Alexandria, *and* Grand Cairo — 872 *to* 874
A table of the agreement which the weights of the principal places in Europe *have with each other* — 874
Ditto of the dry meaſure at Amſterdam *for corn* — 876 *to* 880
A table of the agreement of diverſe meaſures with thoſe of Amſterdam, Paris, *and* Bourdeaux — 880 *to* 885
An abſtract of the correſponding weights and meaſures of the different ſpecies of corn in Flanders *and* Germany — 885
Ditto of long meaſures — 887
A table of the agreement which the long meaſures of the chief places in Europe *have with each other* — 890
The meaſures of France *and other countries reduced into feet, inches, and lines* — 892
The correſpondency of the length of a foot in diverſe places — ib.

Of

Of dry and liquid measures — 893
Of coins, both real and imaginary, in all countries — 895 *to* 907
An alphabetical list of the coins, weights, and measures of Asia — 907 *to* 918
Of the customs; of their administration, and of Custom-house officers — 918
Alphabetical schedule of the duties payable at the Custom-house on the importation and exportation of all goods and merchandize, together with the drawbacks, bounties, forms of transacting business, &c. — 920 *to* 976
Net import duties payable in Ireland — 977 *to* 982
Duties payable on goods, wares, and merchandize, imported into the United States *of* America — 983 *to* 987

APPENDIX, N° I.
To the corn laws — 988

N° II.
To bills of exchange — 992

N° III.
To bankruptcy — 993

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AN

HISTORICAL DEDUCTION

OF

TRADE AND COMMERCE,

FROM THEIR ORIGIN.

IT is eſſentially neceſſary for the better underſtanding of this hiſtorical Deduction, that we ſhould define the diſtinction between the terms TRADE and COMMERCE, according to their general acceptation at this day throughout the mercantile world.

Trade is that kind of traffick which is carried on between the members of any community, great or ſmall, inhabiting the ſame country; wherein exchanges are made of one commodity for another: In which caſe, the Trade ſo carried on is uſually called *Barter*; or wherein purchaſes of commodities are made from each other, through the medium of money, or its repreſentatives bills, notes, bonds, and other *paper* ſecurities.

Commerce is that intercourſe with foreign nations, which is carried on from one country to another by means of navigation; either for the exchange of commodities, or for the ſale or purchaſe of them, through the medium of money. Commerce then, has its baſis in navigation, and is ſupported by EXPORTS and IMPORTS, whereas ſimple trade may be tranſacted independent of theſe elements and commerce, and herein chiefly conſiſts the difference.

Trade is almoſt as old as the creation; a very ſmall increaſe of mankind proved its utility, and demonſtrated the natural dependence our ſpecies had upon one another: Their occupations were, by the wiſe diſpoſition of providence, ſuited to their wants; and the diligent diſcharge of the one, by his bleſſing, rendered ſufficient to ſupply the moderate cravings of the other; and though tilling of the earth, or feeding of flocks, were the ſole primevous labours, yet, limited as they were, they could not be exerciſed by the firſt race of men with that comfort their great Creator deſigned them, without a mutual correſpondence and traffick, as the huſbandman's ſubſiſtence would have been poor without the graſier's help, and the latter's comfortleſs, under the want of corn, fruits, and pulſe to his milk; this led them to an exchange of commodities; and thus trade commenced in the infant world, and ſo continued whilſt our *progenitors* could content themſelves with theſe riches of nature, and were not obliged by a growing poſterity, to alter their method in diſpoſing of them. But when this became the caſe, buying and ſelling through the medium of money was invented and adapted in lieu of *barter* by

moſt nations, and commerce has been ſo handed down to us, with the exception of thoſe ſavages to whom the uſe of coin has hitherto remained unknown, and whoſe traffick is ſtill carried on in its primitive way, though not always with its native ſimplicity.

But before this alteration, occaſioned by the great increaſe of mankind, their deſires were eaſily ſatisfied, as their wants were the boundaries of them; they contentedly made the fleece of their ſheep ſerve them for clothing, and their hunger found a ready ſupply from their gardens and flocks; a neighbouring ſpring ſlacked their thirſt; and a tree, or a tent, was ſufficient to defend them from the inclemencies of weather, in thoſe climes where the firſt race was ſettled. Their labour procured them a ſatisfactory ſupport, and the products of the earth and cattle ſupplied them with the common neceſſaries and comforts of life; till the contamination of vice introduced fraud, and this gave birth to avarice and violence; the ſtronger began to invade the weaker, and as ſeparate property could only be maintained by force and policy, cities were built, and governments formed; and when by this means an aggregated number ſwelled to too great a magnitude, to have their neceſſities ſupplied by neighbouring territories, they were compelled to ſeek for remoter helps, by commerce, deſtroying thoſe halcyon days, pregnant with the bleſſings of health and peace, by the introduction of luxury and exceſs, which ſpreading in proportion to the extenſion of commerce, carried with them a long train of miſchiefs and diſeaſes, quite changing the face of the primeval golden age, ſo replete with quiet and tranquillity; diſtempers and diſquiets flowed in from this defection; and our unhappy forefathers no ſooner quitted the rules of abſtinence and moderation, than they found this deviation and change productive of a thouſand ills, deſtructive to the eaſe both of mind and body. But though theſe were the fatal conſequences of commerce abuſed, yet the growth of mankind, and the peopling thereby of different parts of the earth, rendered the continuation of it abſolutely neceſſary for their comfort and ſupport; and life itſelf would have proved burthenſome, without this intercourſe of mutual aſſiſtance, which, in proceſs of time, encreaſing as mankind did, and men's views and deſigns being extended in proportion to their deſires, commerce was no longer limited to providing the neceſſaries and luxuries of life, but profit was ſought in, and became a motive to the carrying it on; which, however, might occaſionally have *promoted* both unity and charity among men, had the correſpondence been conducted with that ſincerity it ought; and by this means might have been rendered productive of thoſe reciprocal benefits and advantages, that naturally accrue from the ſupplying the wants of one country, with the ſuperfluities of another. And though the degeneracy of mankind has prevented the firſt principles of commerce leading to happineſs having the intended effect, by intermixing cozenage and deceit in their dealings, and for many ages paſt, has made *ambition* and *avarice* the chief motives to the continuance and extenſion of commerce; yet theſe ſiniſter deſigns have accidentally proved very beneficial to latter ages, as it is probable, that without ſuch excitements, the greateſt part of the world had ſtill remained unknown to us; but, puſhed on by the deſire of gain, in order to ſupport the one and ſatisfy the other, men have made many diſcoveries which lay hid for ages, diſregarding the riſks they ran, and the inconveniencies they ſuffered, whilſt they conſidered themſelves in the road to riches and preferment: The pleaſing proſpect animated them to freſh engagements, and the ſucceſſion of theſe opened to us the wide field for commerce that now lies before us; whatever then were the motives to the daring enterprizes of former ages, we of the preſent are generally indebted to the undertakers of them, for many of the comforts and conveniencies of life. And my deſign in the remainder of this chapter being to ſhew the advantages we receive from their labours, and to deduce the growth and progreſs of commerce from the ſmall beginnings I have mentioned, I ſhall point out the beneficial influence it always had, and ſtill has, on human affairs; and ſhew that all nations have increaſed in ſtrength and power, or remained weak and abject, in proportion as they have encouraged or neglected commerce; which is now become an univerſal inſtrument that offers itſelf to every one, for the improvement of his fortune, and from whence the moſt flouriſhing ſtates derive their ſtrength, ſovereigns their ſureſt revenues, and private men the eſtabliſhment of their families in eaſe and ſplendor.

Whoever runs over all the ages of the world will find, that the hiſtories, even of the moſt warlike nations, will furniſh him with more intereſting accounts of their *commerce* than of their *conqueſt*.

If

If the greateſt empires were eſtabliſhed by valour and the force of arms, they were made firm, and ſupported, *only*, by the ſuccours, which trade, through the labour and induſtry of the people, furniſhed them with; and the conquerors would ſoon have languiſhed, and periſhed with the conquered, had they not, as the ſcripture expreſſes it, converted the iron of their arms into ploughſhares, and had recourſe to riches, which *agriculture*, *manufactures*, and *commerce* produce, in order to preſerve and improve, by the tranquil arts of peace, the advantages acquired in the horrors and tumults of war.

In proof of the above general aſſertion, of the utility and excellence of commerce, let us look back into the firſt ages of the world, and bring the hiſtory of *it* down to our times.

Monſ. HUET *, the learned author of that excellent book, entitled, *A Hiſtory of the Commerce and Navigation of the Ancients*, ſeems perſuaded, that the *Phenicians* were the firſt navigators in the world; though many think the late ingenious Dr. GARCIN, better founded in aſſigning it to the *Arabians*, in the little tract he communicated to the public on that ſubject. I ſhall not preſume to offer my ſentiments on ſo intricate a ſubject, after what has been advanced by thoſe learned authors, but ſhall lay before my readers the reaſons they aſſign for their different concluſions, from which they may draw motives for fixing their own judgment, on the ſide they think moſt agreeable to truth. I ſhall begin with the opinion of the firſt of theſe great men, and conclude with that of the latter.

COMMERCE OF THE TYRIANS.] The Phenicians, whoſe capital was the city of TYRE, are the firſt that preſent themſelves on examining the Hiſtory of the Ancients; and they will ſufficiently prove, to what a height of glory, grandeur, and riches, a nation is capable of attaining by the ſole reſource of commerce.

Theſe people, according to HUET, only occupied a narrow border along the ſea-coaſt, and *Tyre* itſelf was built on an ungrateful barren ſoil, which, when moſt fruitful and productive, was inſufficient to ſupport that great number of inhabitants, which the firſt ſucceſſes of commerce had brought thither.

Two advantages, however, indemnified this defect; they had excellent ports on the coaſts of their little ſtate, particularly that of their capital; and they were born with ſo happy a genius for commerce, as to be commonly aſſociated with the *Egyptians*, in the honour done theſe latter, by ſuppoſing them the inventors of *naval commerce*, particularly that of long voyages.

The *Phenicians* knew ſo happily how to profit by theſe two advantages, that they ſoon became maſters of the ſea, and of *commerce*. *Lebanon*, and the other neighbouring mountains, furniſhed them with excellent wood for the conſtruction of their ſhips; and they had in a ſhort time numerous fleets which ran the hazards of unknown voyages to eſtabliſh their commerce; and their people multiplying almoſt to infinity, by the great number of ſtrangers, which the deſire of gain, and the ſure occaſion of enriching themſelves, drew to their city, they found themſelves in a condition to ſend out many colonies, particularly that famous one of *Carthage*, which preſerved the *Phenician* ſpirit of traffick, and did not yield to *Tyre* itſelf in its commerce, whilſt it greatly ſurpaſſed it in the extent of its dominion.

The degree of glory and power, to which the *navigation* and *commerce* of *Tyre* had raiſed it, rendered it ſo famous, that the report of prophane authors would hardly be believed deſtitute of exaggeration, had not the prophets themſelves ſpoke of it with ſtill greater magnificence; ſo that the deſcription of its grandeur, of its forces, and the moſt incredible number of its veſſels, merchants, and merchandizes, makes one of the moſt beautiful paſſages in the prophecy of *Ezekiel*, which could not poſſibly be forgot, when we are ſpeaking of the excellence of *commerce*, and its ſplendor. The prophet *Iſaiah* likewiſe ſays, that *Tyre* is the common city of all nations, and the centre of all *commerce*; and in a word, is the queen of cities, whereof the merchants are princes, and which has for traders the moſt illuſtrious perſons of the earth. Such was the ancient *Tyre*, when ſhe fell, or ſunk, under the arms of *Nebuchadnezzar*, after a ſiege of thirteen years. It is true, that providence had ſecured an aſylum and reſource to the inhabitants of this unfortunate city; for the *Tyrians*, during ſo long a ſiege, had both the precaution and time to fortify a neighbouring iſland, where they eſtabliſhed their maritime

* Formerly Biſhop of *Avranches* or *Soiſſons* in *France*.

maritime forces, and where their merchants retired with their ſtores and merchandizes, and there continued ſo flouriſhing a traffick, that the taking and ruining of their firſt city, did not deſtroy their empire of the ſea, nor the reputation of their *commerce*.

It was this new city of *Tyre*, which, truſting in its riches and puiſſance, dared afterwards to reſiſt *Alexander the Great*, already maſter of one part of *Aſia*, and had like to have interrupted, for ſome time, the courſe of his victories; but in reward for its temerity, it was entirely deſtroyed by the conqueror; and to the end there might remain to it no hopes of being a ſecond time reſtored, he removed its *marine* and *commerce*, transferring them to *Alexandria*, a new city that its founder intended to make the capital of the empire of *Aſia*, of which he then meditated the conqueſt.

COMMERCE OF THE CARTHAGINIANS.] Whilſt the old and the new *Tyre* experienced theſe great revolutions, *Carthage*, a *Tyrian* colony augmented its forces by commerce, and thus became enabled to diſpute with *Rome* the empire of the world.

Thoſe new *Africans* ſoon reaped the benefits, which the happy ſituation of their city offered, and profited by the genius for *navigation* and commerce, which they had brought with them from *Phenicia*; they made their fleets and merchants paſs on one ſide to the ocean, beyond the pillars of *Hercules*; and, on the other, along the whole weſtern coaſt of *Europe*; and, if ſome authors may be credited, their pilots and their merchants even had the boldneſs, or good fortune, to be the firſt that penetrated as far as thoſe unknown lands, the diſcovery of which, many ages afterwards, has done ſo much honour, and brought ſo much profit to the *Spaniards*.

The *Carthaginians*, totally occupied in their *commerce*, never thought, till too late, to avail themſelves of the immenſe riches, which they had amaſſed by this means, to extend their dominion abroad; however, their being unſeaſonably tired of their pacific ſtate coſt them dear.

Their city, which commerce had peopled with above ſeven hundred thouſand inhabitants, was ſoon deſerted, to furniſh their armies with troops, and recruits. Their fleets, accuſtomed ſolely to carry their merchants and merchandize, were now only loaded with ſoldiers and warlike ſtores; and of their wiſeſt and moſt fortunate traders were formed thoſe chiefs, and generals of armies, which were deſtined to make *Rome* tremble, and put *Carthage* in a condition to become the miſtreſs of the world.

The renowned military exploits of the *Carthaginians* in *Sicily*, *Sardinia*, *Spain*, and particularly *Italy*, under the famous HANNIBAL, and alſo the diſorder of their affairs by the victories of the two SCIPIOS, are facts well known, and are of too little import to the matter of which we treat here, to call for any detail of them. I ſhall, therefore, only add, that commerce had raiſed *Carthage* to ſo high a degree of riches and power, as obliged the *Romans* to carry on a cruel and doubtful war for fifty years, to ſubdue this rival; and, in fine, triumphant *Rome* believed ſhe could not entirely ſubjugate and reduce her by any better means, than cutting off thoſe reſources which ſhe might yet find in commerce, and which, during ſo long a time had ſupported her againſt all the forces of the republick.

It was, in effect, that reſolution of the ſenate which decided the fate of *Carthage*; and the *Carthaginians* themſelves were ſo terrified, that having apprehended by this deſign, they ſhould be obliged to give up their fleet, and to retire inland five leagues from the ſea, they choſe rather to expoſe themſelves to the hazard of the third *punic* war, ſo fatal to them, than to renounce ſo eaſily the only hopes that could remain to them in their misfortunes, and voluntarily conſent to ſee their *commerce* paſs to *Utica*, where they knew the *Romans*, to atchieve their ruin, propoſed to transfer it, as we have ſaid *Alexander* did that of *Tyre*, to the new city he had given his name to, when he determined to puniſh the *Tyrians* for having dared to retard his conqueſts.

COMMERCE OF THE EGYPTIANS.] Alexander lived too ſhort a time to be witneſs of the happy and flouriſhing ſtate, to which commerce would elevate this laſt city. The *Ptolemies*, who, after his death, had *Egypt* for their part of his conqueſt, took care to ſupport the *infant trade* of *Alexandria*, and ſoon brought it to ſuch a degree of perfection and extent, as to bury in oblivion both *Tyre* and *Carthage*, which during ſo long a time, had carried it on, almoſt alone, and had re-aſſembled to them the *commerce* of all other nations.

The rapid ſucceſs of the *commerce* of *Alexandria*, ought not to occaſion much ſurpriſe, when reflection is made on its happy ſituation, which rendered it ſo commodious to be

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the depoſitory of all merchandizes from the eaſt and weſt; and to maintain the empire of the ſea, the ſureſt means of ſurpaſſing all other nations in wealth and power.

This famous city had on one ſide free *commerce* with *Aſia*, and all the eaſt, by the *Red Sea*; the ſame ſea and the *Nile* gave her entrance into the vaſt and rich countries of *Ethiopia*. The *commerce* of the reſt of *Africa* and *Europe* was open to her by the *Mediterranean*; and, if ſhe would carry on the *interior commerce* of *Egypt*, ſhe had beſides the convenience of the *Nile*, and *canals* made by the hands of men, works immortal, and almoſt incredible, of the firſt *Egyptians*, with the advantage of caravans, ſo convenient for the ſafety of merchants, and for the tranſportation of their merchandizes.

Add to theſe, a large and ſafe port, where foreign veſſels arrived from all parts, and whence departed inceſſantly the *Egyptian* veſſels, which carried their *merchants* and *commerce* to all parts of the then known world.

It was this conveniency of depoſiting merchandizes at *Alexandria*, that ſpread through all *Egypt* thoſe immenſe riches, which rendered their kings ſufficiently powerful to ſupport themſelves, for more than a century againſt the *Romans*, who endeavoured, from time to time, to ſubdue ſo fine a kingdom: Riches ſo conſiderable, that hiſtorians affirm, that the product only of the cuſtoms of importation and exportation, upon the merchandize that paſſed the cuſtom-houſes of *Alexandria*, amounted annually to more than thirty millions of livres, or about 2,250,000l. ſterling, though the major part of the *Ptolemies* were moderate in the impoſts which they laid on their people.

COMMERCE OF THE ROMANS.] Before the battle of *Actium*, the *Romans* had always found, in the ſpoils of the nations they had ſubjected, whence to fill the treaſury of the republick and, at the ſame time, to furniſh a ſufficiency for the expences, in which the plan of an univerſal monarchy continually engaged them.

Theſe reſources beginning to fail them, the *commerce* of *Egypt* ſeemed very proper to ſupport, by its riches and credit, the reputation and empire of *Rome*.

From the time that AUGUSTUS had reduced this kingdom to a province, he earneſtly endeavoured to make the commerce of *Alexandria* flouriſh more than ever, and at the ſame time he augmented that which the *Egyptians* had carried on in *Arabia*, the *Indies*, and to the moſt remote parts of the eaſt, by way of the *Red Sea*.

Alexandria become *Roman*, was only inferior to *Rome* itſelf, in grandeur and in number of inhabitants. The magazines of the capital of the world were no longer filled but with the merchandizes which came to it from the capital of *Egypt*; and very ſoon neither *Rome*, nor all *Italy* ſubſiſted, but by the corn and other proviſions brought to it by the merchants and by *Egyptian* fleets: and that in ſo great a quantity and abundance, that *Joſephus* affirms, though doubtleſs with ſome exaggeration, that *Alexandria* yielded more riches to the treaſury of *Rome* in one month, than all *Egypt* in a year: Though, if *Pliny's* calculation is to be credited, the profits of the *commerce* of *Egypt* amounted yearly, for *Rome*, to 125,000,000 crowns, or about 28,125,000l. ſterling, that is to ſay, a hundred times more than the *Romans* employed, whoſe ordinary expences did not amount to above 1,150,000 crowns.

This great commerce, which ſoon cauſed that of all the other provinces of the empire to flouriſh, augmented inceſſantly, and made the ſenate determine to maintain it, by the corporations it eſtabliſhed in *Rome*, for *trade* and *traders*, by the laws which it made in their favour, or rather by thoſe of the *Rhodians*, which it adopted, and which are long ſince become a part of the law of nations, for the *navigation* and *commerce* of the *Mediterranean*, by the magiſtracy it charged with their execution, and by the protection which it afforded to merchants, as well ſtrangers as *Romans*, throughout the empire.

Alexandria, notwithſtanding, had, in the end, the fortune of *Tyre* and of *Carthage*. Commerce had raiſed her, and the fall of her commerce overſet her. The *Saracens*, who ſeiſed on *Egypt* in the reign of *Heraclius*, having by their ferocity driven away the merchants, who love tranquillity and peace, this city, which then held the firſt rank after *Rome* and *Conſtantinople*, hardly preſerved any thing of its ancient ſplendor; and though it afterwards regained ſome vigour under the Sultans, and enjoys the ſame now from the chriſtian nations which carry on the commerce of the *Levant*, it is however, no longer poſſible to know again that ancient *Alexandria*, once ſo famous, and which by its commerce was, for ſo long a time, the glory and ſupport of an empire, that, in truth, was founded by arms, but received its principal ſtrength from *commerce*.

COMMERCE

COMMERCE OF THE GAULS.] Before we proceed to treat of the *commerce* of the moderns, we will yet add ſome examples of the *Gallick* cities, which were formerly rendered famous by the enterprizes of their merchants.

Marſeilles, the moſt ancient ally of the *Romans*, equally celebrated for its antiquity, for the wiſdom and equity of its ſenate, for the ſciences taught in its academies, for the many colonies it eſtabliſhed, and for the wars it glorioufly maintained againſt ſo many different people, jealous of its riches, was indebted only to its *trade* for theſe advantages; and it was ſolely by the means of *commerce*, that it arrived, in ſo ſhort a time, to that high point of reſpect and power, which rendered it for a long time, the arbitrator of the neighbouring nations, who were drawn there to learn the arts and politeneſs of *Greece*, which its firſt inhabitants brought from *Aſia*, when they left it, to ſettle among the *Gauls*.

The example of *Marſeilles* ſoon animated the greateſt part of the Gallick cities to engage in commerce, more eſpecially thoſe that were ſituated upon the ſame ſea, or that were not far diſtant.

Arles, became famous for its experience in navigation, and for its ability in the art of building ſhips. It likewiſe diſtinguiſhed itſelf for the invention of divers manufactures, and above all, its works in gold and ſilver gave it a great reputation.

Narbonne even yet exceeded *Arles*, and, ſo long as its ports exiſted, it ſaw fleets arrive from the *Eaſt*, from *Africa*, *Spain*, and *Sicily*, laden with all ſorts of merchandize; whilſt the inhabitants on their ſide equipped their own ſhips to carry abroad the products of their country, or the manufactures produced by their induſtry.

When the alteration of the courſe of the river *Aude* had occaſioned its deſerting the port of *Narbonne*, *Montpellier* took the advantage of that change, and this laſt *city* received in her own, ſhips from all parts of the *Mediterranean*, which arrived before in that of the firſt mentioned.

There was yet reckoned among the number of the *French* cities, ſituated on this coaſt, which commerce had rendered flouriſhing, though in a very inferior degree to thoſe juſt now mentioned, *Agde*, *Toulon*, *Antebes*, *Frejus*, and *Ague-Morte*, particularly the laſt, before the ſands of the *Rhone* had left it at a diſtance from the ſea; and no one can be ignorant, that even in the time of *St. Lewis*, this was the port where the embarkations were made for the holy wars, and that it was the merchants of this place who furniſhed that monarch with the greateſt part of the ſhips that compoſed the numerous fleet which he fitted out in the laſt years of his life for his expedition againſt *Tunis*.

The *Gallick Ocean* had likewiſe its ports and cities for *trade*, of great reputation; as *Bourdeaux* in *Guyenne*, *Vannes* and *Nantes* in *Bretagne*, and the famous *Cerbillon*, now unknown, which *Strabo* places near the mouth of the *Loire*.

In fine, in the inland country was *Lyons*, a city at this time famous for its *trade*, where, if we may believe ſome authors, there formerly aſſembled no leſs than ſixty nations to treat of their *commerce*, and which from that time, by its happy ſituation at the confluence of the *Rhone* and *Saone*, extended its intercourſe from the *Ocean* to the *Mediterranean*, and was become as a general ſtaple or ſtorehouſe for all the *French* merchandizes, without reckoning the commerce which ſhe carried on in all the *Levant*, and particularly in *Egypt*, by means of the correſpondencies which ſhe had with *Arles and Marſeilles*.

RE-ESTABLISHMENT OF COMMERCE IN THE WEST. Let us now paſs from the ancient hiſtory, to thoſe of the middle ages and lateſt times, and theſe two hiſtories will furniſh us with facts, which will not be leſs intereſting, nor leſs glorious to *commerce*, than thoſe of which antiquity has taken care to preſerve to us the memory.

Though the *Romans*, as we have ſeen, cultivated and improved the commerce of *Egypt*, after that country became one of their provinces; yet in general they were not a people poſſeſſing the ſpirit of commerce, they rather ſupplied the want of native induſtry by their attachment to military glory, and they provided themſelves with the luxuries of other nations by conquering and plundering them. The accounts of the immenſe treaſures they brought home, after ſubduing the richeſt countries of the then known world, almoſt ſurpaſs the bounds of probability; but they are ſo well authenticated, that they muſt find a place here as memorials of the ſplendor of ancient *Rome*.

Julius

Julius Cæſar, upon his conqueſt of *Gaul*, *Africa*, *Egypt*, and *Pontus*, is ſaid to have had at one time carried before him in his triumph, veſſels of gold and ſilver, computed by modern authors to have been equal in value to twelve millions ſterling, which were depoſited in the public treaſury; alſo 1822 gold diadems, weighing 15,023 pounds, independent of the vaſt treaſure which belonged to him as general. Their pro-conſuls were likewiſe continually ſending or bringing home, from the conquered provinces of the eaſt, immenſe riches in gold and ſilver, precious ſtones, and every article rare or excellent for clothing, furniture, tables, and equipages, and for the decoration of their public buildings. The palaces, eſtates, and revenues of many of the firſt citizens of *Rome* equalled thoſe of ſovereign princes. *Lentulus*, *Craſſus*, and others had eſtates worth three or four millions. The emperor *Nero's* donations at ſundry times are by ſome computed to have amounted to 17,760,000l. ſterling; and it is recorded, that he paid for a ſingle carpet the ſum of 32,000l. Some *Roman* ladies are ſaid to have paid 3,000l. for a ſingle piece of linen; and *Lullia Paulina*, when dreſſed in all her jewels, wore to the value of 322,000l. ſterling. Yet theſe immenſe luxuries not being employed in circulation, through the various channels of commerce, were in a great degree to be conſidered as a dead ſtock locked up in the houſes of individuals; and as the ſloth, luxury, and effeminacy of the emperors, the magiſtrates, and the people increaſed with them, it was ſoon found by ſad experience, that the empire could not ſuſtain the vaſt expence of her civil and military eſtabliſhments without induſtry, without manufactures, without trade, to ſupport general commerce. Its diſſolution was the conſequence of relaxation from the principles of induſtry, ſobriety, and œconomy, the baſis of the durable proſperity of commercial ſtates.

The fall of the *Roman* empire drew after it that of all the people who had ſubmitted to it. The inundation of the *Barbarians*, ſo fatal to the ſciences and polite arts, was not leſs ſo to commerce; and, if the learned ſaw their libraries, and the fineſt works, ſacrificed to the flames, by people equally brutal as ignorant, the merchants had not more power to ſave from their fury either their numerous trading fleets, with which they covered both the one and the other ſea, nor the vaſt magazines, which they had always full of the moſt uſeful and rich merchandizes.

So that whilſt theſe fierce nations, were fighting with the *Romans*, or whilſt they were diſputing among themſelves the poſſeſſion of the countries they had uſurped, all their *commerce* conſiſted only of the ſpoils of the vanquiſhed; and they had no other *trade* than the ſharing of thoſe immenſe treaſures, they found amaſſed in all the towns of the empire, which they ſacked, and particularly in the capital, which was more than once expoſed a prey to their fury and avarice.

But after the braveſt and moſt fortunate of theſe barbarians had formed powerful monarchies from the ruins of the *Roman* empire: When they were eſtabliſhed, ſome among the *Gauls*, as the *Franks*; others in *Spain*, as the *Goths*; and others in *Italy*, as the *Lombards*; they ſoon learnt from the people they had ſubjected, and with whom they afterwards aſſociated, the neceſſity of *commerce*, and the manner of carrying it on with ſucceſs; and they became ſo ſkilful, that ſome of them were in a ſtate or capacity of giving leſſons to others; for it is to the *Lombards* that the invention and uſe of banks, of books with double entries, of exchanges, and a number of other ingenious practices, which facilitate and ſecure commerce, are commonly attributed.

It does not appear very certain who were the people of *Europe*, who after the new maſters had divided it, and reſtored peace, applied themſelves firſt to commerce, and made it flouriſh.

Some injunctions of *Charlemagne*, and of *Louis le Debonnaire*, might make it believed, that it was by *France* that *commerce* re-eſtabliſhed itſelf in the *Weſt*, and the laws that thoſe two princes made, either to hinder their ſubjects from a contraband trade with their neighbours, or to eaſe the merchants who trafficked in the interior parts of their eſtates, from the new impoſitions which they would have laid on their merchandizes, at leaſt ſhew that the *French*, before the eighth century, did not carry on an inconſiderable *trade*, either within or without the kingdom.

There is, however, an appearance, that the civil wars, which were ſo frequent under the reign of *Debonnaire*, and during that of his children, ſoon interrupted the firſt ſucceſs of *commerce*, revived in *France*, and the incurſions of the *Normans*, who, almoſt at the ſame time, laid waſte the *French empire*, having entirely deſtroyed *trade*; the *Italians* had a junc-

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ture to acquire the glory of being its new reſtorers, as they ought to have that of afterwards recalling the liberal arts and ſciences, which had been baniſhed ever ſince the diſmembering the *Roman* empire.

It is therefore to the people of *Italy*, particularly to thoſe of *Venice* and *Genoa*, that the re-eſtabliſhment of *commerce* is indebted; and it is alſo to *commerce* that theſe two famous republicks, which have been long rivals, owe their glory and power.

COMMERCE OF THE VENETIANS.] In the bottom of the *Adriatick Sea*, there were a quantity of ſmall marſhy iſles, ſeparated only by narrow canals, but covered and ſecured by divers moraſſes, which rendered the taking them almoſt impracticable. Here ſome fiſhermen retired, and lived on the ſmall traffick which they made with their fiſh, and the ſalt they drew from the ponds on ſome of theſe iſles.

It was theſe iſlands which ſerved for a retreat to the *Venetians*, a people of that part of *Italy* ſituated along the Gulph, when *Alaric* king of the *Goths*, and afterwards *Attila* king of the *Huns*, came to ravage *Italy*, particularly after the laſt, who highly merited the name of the ſcourge of GOD, which he gave himſelf, had taken *Padua* and *Aquila*, and reduced them to aſhes.

Theſe new inhabitants of the moraſſes did not at firſt compoſe any body politic, but each of the ſeventy-two iſles of this little Archipelago had, for a long time, their proper magiſtrates, and, a kind of ſeparate ſovereignty.

When their *commerce* became ſo flouriſhing as to give jealouſy to their neighbours, the *Venetians Iſlanders* thought of forming themſelves into a *republick*, and it was this union, firſt begun in the ſixth century, but not perfected till towards the middle of the eighth, which laid the moſt ſolid foundations of the *power* and *commerce* of the *Venetians*, particularly that of the laſt, which, during more than four ages, had not its equal in all *Europe*.

Before the union of the iſles, the commerce of their inhabitants ſpread but little beyond the coaſts of the *Mediterranean*; but the eſtabliſhment of the new republick having given courage and ſtrength to their merchants, their fleets were in a ſhort time ſeen to viſit the moſt diſtant parts of the ocean, and afterwards thoſe of *Egypt*; and by the treaties made with the ſultans, under the Pope's approbation, ſecured the articles of ſpices, and other rich merchandizes of the eaſt, which they were to purchaſe at *Cairo*, a new city the *Saracen* princes had built on the banks of the *Nile*.

The riches of the *Venetians* increaſed to ſuch a degree, by the *commerce* with *Egypt*, that they thought themſelves ſtrong enough to undertake ſome conqueſts, and to form, from the taking a number of important towns, what they called their ſtate of *Terra Firma*, which rendered them yet more conſiderable in *Italy*, though they loſt part of it, after the famous league of *Cambray*.

Animated by theſe firſt ſucceſſes, and ſupported by the reſources of their *commerce*, and by the inexhauſtible funds, which their merchants were capable of furniſhing to the treaſury of the republic, *Venice* happily carried her arms yet farther, and extended her conqueſts on the ſide of the *Morea*, and in many of the principal iſles of the *Mediterranean* and *Archipelago*, which ſhe ſubjected to her dominion; and, to complete her renown, ſhe had a great ſhare in almoſt all the croiſades which were made for the recovery of the holy land, or for the ſuccour of the chriſtians of the *Levant*, as well as at the taking of *Conſtantinople*, and the conqueſt of the beſt part of the *Grecian empire*, which paſt under the dominion of the *French* princes, in the beginning of the thirteenth century.

Venice was in this ſtate of proſperity and glory when ſhe experienced the lot of ſo many powerful cities, which the fall of their *commerce* had either ruined or weakened; ſhe found, in the diminution of her own, the fatal term of that power which had given umbrage to ſo great a number of princes combined to her deſtruction, who ſigned the treaty of *Cambray* in 1508; and two of her moſt celebrated hiſtorians take particular notice that their ſage ſenate had not had ſo much trouble to re-eſtabliſh their public affairs after the famous battle of *Aignadel*, but becauſe the republic could not any longer find the ſame reſources as heretofore, in the commerce of the merchants, already greatly enfeebled by the loſs of that of the ſpices, which the *Portugueſe* had begun to carry from them, and which was alſo diminiſhed from another ſide by the *Provincials*, particularly by thoſe of *Marſeilles*, who became in greater eſteem than the *Venetians* at *Conſtantinople*, and in the principal ſea-ports of the *Levant*, and who knew ſo well how to main-

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tain their credit, that very ſoon all the *commerce* of thoſe parts was carried on only under *French* colours.

COMMERCE OF THE GENOESE.] *Genoa*, which had re-commenced an application to *commerce*, at the ſame time with *Venice*, and had not been in any degree leſs fortunate in making it flouriſh, was, for a long time, a troubleſome rival, who diſputed with the *Venetians* the empire of the ſea, and who ſhared with them the commerce, they carried on to *Egypt*, and all the other ports of the *Levant*, and of the Weſt.

A jealouſy was not long in breaking out, and the two republics having come to a rupture, it was not till after three centuries of an almoſt continual war, only ſuſpended by ſome treaties, that the *Genoeſe*, commonly ſuperior to the *Venetians*, loſt, about the end of the fourteenth century, their reputation and ſuperiority at the battle of *Chiozza*, where ANDREW CONTARINI, *doge* and *general* of the *Venetians*, ſecured to his republic, by a happy deſperation, the honour of an unequal combat, which decided for ever a quarrel ſo famous, and reſtored to *Venice* the empire of the ſea, and the ſuperiority of commerce which were the rewards of a victory ſo unexpected.

Genoa was never able to recover its loſs, and victorious *Venice* enjoyed for a whole century its advantages, both in commerce and *war*; but, in fine, theſe two republics, although very unequal for the rank which they hold now in *Europe*, and for the figure they make, attained a ſort of equality in commerce, with this difference, however, that the *Venetians* carried on a greater than the *Genoeſe* in the *Levant*, and the *Genoeſe* a more conſiderable one than the *Venetians* in *France*, *Spain*, and other chriſtian ſtates in *Europe*.

COMMERCE OF THE HANSEATIC TOWNS.] The wild, enthuſiaſtic expeditions of the Cruſaders for the recovery of the Holy-Land from the *Saracens*, in the eleventh and following centuries; the introduction of the *diſtillery* into *Europe* in the *twelfth* century; the conqueſts of the *German Knights* of the croſs in *Pruſſia* and *Livonia*; all theſe circumſtances concurred to the revival and ſtrengthening of commerce in the meridional parts of *Europe*. But, above all, the inſtitution of a ſociety of merchants in the North, which not only brought it to all the perfection it was capable of having before, the diſcovery of the *Eaſt* and *Weſt Indies*, but alſo began to give it thoſe laws it has continued to obſerve under the name of *uſes* and *ſea cuſtoms*, and to form a ſort of *Code*, the original of all thoſe, which have been ſince made for maritime commerce.

This ſociety is the famous aſſociation of the *Hanſeatick towns*, which is commonly believed to have begun at *Bremen* on the *Weſer*, in 1614.

It was not at firſt compoſed of more than the towns ſituated on the *Baltick Sea*, or of thoſe that were but little diſtant. Its reputation and its forces increaſing, there were but few of the trading towns in *Europe* which were not deſirous of engaging in it. FRANCE furniſhed to the *confederation*, *Rouen*, *St. Malo*, *Bourdeaux*, *Bayonne*, and *Marſeilles*; SPAIN, *Barcelona*, *Seville*, and *Cadiz*; ENGLAND, *London*; PORTUGAL, *Liſbon*; the LOW COUNTRIES, *Anvers*, *Dort*, *Amſterdam*, *Bruges*, *Rotterdam*, *Oſtend*, and *Dunkirk*; ITALY and SICILY, *Meſſina*, *Livorno*, and *Naples*.

The end of the fourteenth century and the beginning of the 15th were the moſt flouriſhing times of this alliance; it was then it preſumed to declare war againſt kings; and hiſtory has not forgot that which it made againſt *Waldemar*, king of *Denmark*, about 1348, and againſt *Eric* in 1428; particularly this laſt, when the *Hanſeatick fleet* was compoſed of forty ſhips, with twelve thouſand regular troops, excluſive of the ſailors.

The policy of the princes, whoſe principal towns had entered into this aſſociation, thought it ought to give bounds to a power, which began to grow ſuſpicious, and which had not failed to become very ſoon formidable; the means were eaſy and ſhort; each one withdrew their merchants from the alliance, which, in a little time (of that large number of towns of which it was compoſed in its greateſt power) found itſelf reduced to only thoſe that had begun the confederation; towns, notwithſtanding, ſtill ſo powerful by their *commerce*, that they were admitted to make treaties with the greateſt kings, and particularly with thoſe of *France*.

Some towns of *Lower Germany* ſtill preſerve the name of *Hanſeatick towns*, but for the greateſt part, this is rather a title with which they aim to honour themſelves, than a mark that they continue to carry on commerce under the laws and protection of the ancient alliance, there not being now more than *Lubeck*, *Hamburgh*, *Bremen*, *Roſtock*, *Brunſwick*, *Cologne*, and a few others, which are truly *Hanſeaticks*, and of which the depu-

ties are found at the aſſemblies, either ordinary or extraordinary, which they hold for the common intereſt of the *aſſociation*.

The great commerce which *Holland* carries on with the *Hanſeatick towns*, does not contribute a little to ſupport them in a part of their ancient reputation; and it is particularly to the alliance which they have with that powerful republic, that they owe the preſervation of their liberty; the ſuccours which ſome of them have received have more than once ſaved them from the enterprizes of the princes their neighbours, who either pretend to have a right over them, or were jealous of the riches that their merchants amaſs by commerce.

COMMERCE OF THE DUTCH.] It was alſo *commerce*, and the immenſe riches the *Dutch* acquired by it, that laid the firſt and moſt ſolid foundation of that power, which has placed them in a condition to give ſo great ſuccours to their allies: and it is only to the reſources, which they have found in commerce, that they owe that degree of ſtrength and credit, in which, at preſent, their republic appears; a credit ſo great and ſo well eſtabliſhed, as has already, for a long time, rendered it equal to kings, and in ſome ſort the arbitrator of their differences.

The *Netherlands* or *Low Countries*, now known by the names of *Auſtrian*, *French*, and *Dutch Flanders*; and the Seven United Provinces, forming the republic of *Holland*, were anciently known by the name of *Lower Germany*, or *Belgium*. They were reduced to a deplorable condition after the fall of the weſtern empire, by the ravages of the barbarians, when, through want of people, their lands remained uncultivated. But about the tenth century, by what means we know not, they began to make a figure in Europe by the manufacture of woollen cloths, with which they ſupplied *Britain* and *Germany*. The four natural products of which the *Britiſh Iſles* had a ſuperfluity were wool, leather, tin, and lead, and occaſionally a fifth, *viz.* corn. The inhabitants of the *Netherlands* had little or no ſuperfluity of natural products to export; they wanted moſt of thoſe of other countries, and they were ſupplied with them by way of barter for their woollen manufactures. *Baldwin* count of *Flanders* about the year 960, conſiderably improved the inland trade of the country by the eſtabliſhment of yearly fairs or markets, and goods were permitted to be brought to them from foreign countries free of all duty.

In the fifteenth century theſe provinces paſſed under the dominion of *Spain*, and were governed by the *Spaniſh* monarchs with ſo much ſeverity, that in the end, they revolted from Philip II. who ſuffered his governor of theſe provinces to invade their religious and civil rights, and ſeven of them by the powerful aſſiſtance of the immortal queen *Elizabeth*, and other proteſtant powers, formed the famous republick of *Holland*, which has ſince become one of the firſt commercial ſtates of *Europe*.

The *Spaniards*, to ſtop the progreſs of this new-born republick, believed that hindering their commerce would ſuffice, and to prohibit that which its merchants had always continued notwithſtanding the war in all the ports of the *Spaniſh* dominions.

The project would have been effectual, for the *Dutch*, deprived of this reſource, would have found themſelves reduced to the laſt extremity, if the moſt daring of their merchants had not taken the reſolution to go to the *Eaſt Indies*, to partake, if it was poſſible, with the *Portugueſe*, then united with the *Spaniards*, the immenſe riches which the *oriental trade* produced.

This enterprize, which appeared far beyond the power of theſe people, but ill fixed in their liberty, or rather who ſtill fought to obtain it, after ſome unſucceſsful voyages, was in the end fortunate; and they fitted out twenty fleets in leſs than ten years, which returned laden with ſpices and other merchandizes of the *Indies*, as well as with the ſpoils and booty of the *Spaniards* and *Portugueſe*.

And, to prevent the confuſion and diſorder that ſo many different companies which were daily forming, and that had nothing in common but the object of their commerce, might bring to it, it was then determined, by uniting them all together, to form the famous *Dutch Eaſt-India Company*.

This great eſtabliſhment was made in the year 1602, and it is this that has ſerved as a model to ſo many other celebrated companies, which have ſince carried on commerce from *Holland* to all other parts of the world, and particularly to the ports of the *Levant*, *Africa*, the *Weſt-Indies*, and, in one word, to every place, where buſineſs could be tranſacted: Theſe able merchants neglected not any, and they found in the leſs important,

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as well as in the more conſiderable, *profits* and *reſources*, which ordinarily eſcaped the notice of other nations.

It is this *commerce*, which may be termed univerſal, that collects together in *Holland*, an infinite variety of merchandizes, which it afterwards diffuſes throughout *Europe*.

It produces hardly any thing, and yet has wherewith to furniſh other people all that they can have need of. *It* is without foreſts, and almoſt without wood, and there is not ſeen any where elſe ſo many carpenters, which work in naval conſtructions either for war or merchandize. *Its* lands are not fit for the culture of wines, and *it* is the ſtaple or mart of wines, which are gathered in all parts of the world, and of brandies drawn from them. *It* has no mines nor metals, and yet there is found almoſt as much gold and ſilver as in *New Spain* or *Peru*, as much iron as in *France*, as much tin as in *England*, and as much copper as in *Sweden*. The wheat and other grains that are *there* ſown, hardly ſuffice for nouriſhment to a part of its inhabitants, and it is notwithſtanding, from *hence* that the greateſt part of its neighbours receive them, either for their *ſubſiſtence* or *trade*; in fine, it ſeems as if the ſpices grew *there*; that the oils were gathered *there*; that it nouriſhed the precious inſects which ſpin the ſilk, and that all ſorts of drugs for medicine or dying were in the number of *its* products, and of *its* growth; *its* warehouſes are ſo full, and *its* merchants ſeem to carry ſo much to ſtrangers, or ſo many ſtrangers come to load in *its* ports, that there is not a day, or it may be ſaid, a moment, when ſhips do not come in or go out, and frequently entire fleets.

COMMERCE OF THE RUSSIANS.] *The commerce* of the Ruſſians, a *commerce* already ſo eſtabliſhed and extended, and which we ſee increaſing under our eyes, merits without doubt not to be forgotten in this hiſtorical abridgement of the progreſs of *trade*, and of the advantages which thereby accrue to thoſe nations that apply themſelves to it.

The ſituation of *Ruſſia* is one of the happieſt for *commerce*; *its* frontiers bordering on thoſe of *China*, give to it a facility of carrying on *trade*, in that vaſt and rich empire, which re-unites, in ſome ſort, the whole *traffick* of all the eaſt. On the ſide of the *Caſpian ſea*, there is offered to it, the commerce of *Perſia*, of *Armenia*, and of the *Eaſt-Indies*; it may maintain a very conſiderable one with *Conſtantinople*, and the other ſtates of the *Grand Signor*, by means of the ports, which it has, or which it may eſtabliſh, on the *Euxine ſea*, and *Archangel* ſecures to it a great *traffick* with *France*, *England*, *Holland*, the *Lower Germany*, and many other nations.

In fine, to ſupport this vaſt commerce with reputation, *it* is not deficient in rich merchandizes, either of *its* own product, or, at leaſt, that are found there, both better, and in greater abundance, than elſewhere; and, for the tranſportation into *its* provinces, of thoſe which come to *it* from abroad, *it* has four great rivers, whoſe courſes are near enough to be eaſily joined by canals, and which diſcharge themſelves into the four ſeas, by which this grand empire is in part bounded, providing, as one may ſay, for bringing even into the capital, the ſpoils of all the reſt of the world.

So many advantages were for a long time neglected by a nation equally uncivilized and lazy, and where the natural indolence was maintained for ages, by the political diffidence and ſuſpicions of the greateſt part of their princes, which had prohibited them all communication with ſtrangers.

It is true, that after the *Engliſh* had diſcovered, by a fortunate chance the celebrated port of *Archangel*, all nations, which carried on the commerce of the north had a free admittance into this part of the Ruſſian dominions, but it was not properly till the glorious reign of *Peter the Great* *, that Ruſſia knew her ſtrength and true intereſt, in regard to *commerce*; and it is to this monarch, always vigilant for the glory of his nation, and the proſperity of his people, that *it* is indebted for having extended its commercial intercourſes to all parts of the world, where other nations of *Europe* have eſtabliſhed theirs, and where till then, the name and empire of the Ruſſians were hardly known.

It is to the year 1697, that the epocha of the eſtabliſhment of their *commerce* ought to be fixed; a year which ſhould for ever be conſecrated in the Ruſſian annals, ſince it was at that time, that the political voyage of the CZAR, *Peter Alexowitz*, began, and that

* This great prince was the firſt of his country, who aſſumed the title of emperor of all the Ruſſias which was confirmed to him by the other ſovereigns of Europe, who ſought his friendſhip. He was the founder of St. Peterſburgh in 1721, and died in 1725.

that this monarch formed the *grand deſign* of changing the face of the *Ruſſian empire*, and, by introducing *commerce*, to bring in alſo in its *train*, *politeneſs*, the *ſciences*, *liberal arts*, and the many other advantages which are ordinarily the fruits of them.

For the execution of a project ſo worthy of him that had conceived it, that famous embaſſy, to which was given the name of the *grand embaſſy*, which without doubt it merited, on account of the *Czar*'s preſence, who determined to be there in perſon, though *incognito*, and mixing in the train of the *ambaſſadors*, was ſeen to arrive in *Holland*, and afterwards paſs over to *England*.

The pretext was the renewal of ancient treaties: The true reaſon was, that the prince this way found an occaſion to come and ſtudy in theſe two nations, ſo ſkilful and fortunate in commerce, the moſt ſure grounds of that, which he deſigned to eſtabliſh in his own dominions.

It was then, that deſpoiled of the marks of grandeur, and mingled with the moſt ſimple workmen, he did not think it unworthy of his rank, to employ his royal hands in the ſame works as they.

Sometimes with the mallet and chiſſel in hand, he worked in the yards at all ſorts of naval conſtructions, which could make the marine flouriſh. At others, attentive to the leſſons of ſome ſkilful pilot, he informed himſelf of the divers points of wind that reign at ſea, or learned the manner of uſing the compaſs, and ſea-charts for a ſafe navigation. At other times, he took the ſhuttle, and ſtudied, in the manufactories, the art of making thoſe fine cloths, which the *Engliſh* and *Dutch* had till then ſold ſo dear to his ſubjects. Sometimes alſo, by converſation with the moſt able merchants, he ſought to penetrate into the ſecrets of the *Bank* and *Exchange*, and to ſecure before-hand correſpondents at *London* and *Amſterdam* to the bankers, whom he propoſed to eſtabliſh in the principal towns of his dominions. In fine, nothing eſcaped his curioſity, from the deſire which he had to form his ſubjects to arts and manufactures: And, as if he deſigned ſome time or other to ſet up as a maſter in the fabrication of all ſorts of works, he himſelf ſerved a ſort of apprenticeſhip, and was ſeen aſſiduous in the work-houſes of the moſt able artificers; here to handle the iron with the blackſmith, there cutting wood with the carpenter; in another place, twiſting hemp with the ropemaker; and in one word, working at all the trades which are neceſſary to ſupport *commerce*, and render it flouriſhing.

It cannot be expreſſed how many eſtabliſhments, favourable to trade, and till then unknown to the *Ruſſians*, were the happy conſequences of the curious diſcoveries of a prince ſo univerſally attentive to the good of his people.

New ports were opened in divers parts of his dominions, and that of *Peterſburgh* now vies with *Amſterdam*.

On the land ſide, with numerous caravans, the Ruſſians made a road acroſs the vaſt regions of *Tartary*, and being admitted at *Pekin*, they returned loaded with the richeſt merchandizes of *China*, and the *Eaſt*.

The junction of the *Baltick* with the *White Sea* is almoſt achieved, by canals cut in the lands, with a labour and expence immenſe and truly royal; and there are lately others dug to join theſe two ſeas with the *Caſpian*, by means of the *Volga*.

But ſtill a variety of regulations, and a fund of ſound policy was wanting to bring commerce and arts to an eminent degree of perfection in an empire ſo ſubject to revolutions in its government. Theſe we have ſeen eſtabliſhed by an admirable code of laws, and in general, by the wiſe adminiſtration of the reigning empreſs, the renowned *Catharine* II. the liberal patroneſs of learning and the polite arts, who, adopting the beſt parts of the plan of *Peter* I. for civilizing his ſubjects, ſends a number of youth annually at her own expence to *England* and other countries, to ſtudy agriculture, botany, trade, the mechanic and polite arts, in ſhort, every branch of uſeful knowledge. At the ſame time, ſhe ſpares no pains or expence to attract ſkilful artiſts, and able workmen in every claſs to her country. Honours, penſions, and large emoluments are the rewards of thoſe who enter into her ſervice. However, it is the duty of the *Britiſh* legiſlature and the magiſtracy to guard as much as poſſible againſt the ſeduction of her manufacturers. For the excellent policy of this princeſs may be as detrimental to the trade and manufactures of other countries, as it is beneficial to her own. Her alliance is already become ſo formidable as to be contended for by the firſt powers of *Europe*, and a country which at the beginning of the preſent century had ſcarce any weight in the affairs of *Europe*

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ids fair to turn the ſcale, into which ſhe ſhall place her influence or intereſt. If her ommerce increaſes in the ſame rapid proportions as her civil, military, and naval power, hoſe who have had the greateſt hand in erecting it, may be the firſt to repent the meaſure.

Let us now join to ſo many examples, ancient and modern, of the advantages that *ommerce* produces to ſtates, and among the nations where it flouriſhes, ſome remarkable inſtances of individuals, whom it has raiſed to the higheſt fortune. Perhaps thoſe who re more affected by their own intereſt than by that of the publick, may herein find otives and inducements to animate and engage them to a profeſſion which may be attended with ſo great and happy effects.

France and *Italy* furniſh us with the two firſt, in the order of time, and *England* with a third, all equally celebrated and ſingular.

JAMES COEUR.] *James Coeur*, a native of *Bourges* in the province of *Berry*, was a ſon of a private merchant; he followed the profeſſion of his father, but with ſuch ſpeedy and happy ſucceſs, that an author aſſures us, he gained more alone, than all the merchants of the kingdom together.

His *commerce* was extended to all the *Mediterranean*; he trafficked in *Aſia* with the *Turks* or *Perſians*, and the other ſubjects of the ſultans of *Babylon*, and in *Africa* with the *Saracens*.

It was by the city of *Montpellier* (which then was the only entrance of the kingdom on that ſide) that he carried on ſuch extenſive commerce; this alſo was the only reaſon that could render that city dear to *James Coeur*, with which he had not otherwiſe any connection, and conſequently this was the ſole motive that could determine him to embelliſh it. After ſpeaking of a fountain which he made, where his arms ſtill remain, we ſhall enlarge a little on the common exchange of the merchants, known at *Montpellier* under the name of the *Loge*, which he built, that this edifice might have a remarkable conformity with the commerce of the city, as it is viſible, he never dreamt of undertaking the former, but with the view of augmenting and facilitating the latter. This building, which ſtill ſubſiſts, is ſolid and magnificent. What is admired above all, are the *Baſſo Relievos* in *Medallions*, which ornament the front, and which employ the vain curioſity of thoſe, who have yet the weakneſs to give into the ſearch after the philoſopher's ſtone; theſe are to them ſo many enigmatical emblems, under which they imagine that *James Coeur* has hid the myſteries of the grand work, of which he made uſe, as they pretend, to acquire his immenſe riches, which, notwithſtanding, he owed ſolely to *trade*, according to Mr. *Aſtruc*.

His great riches, acquired by a way ſo lawful, and the probity with which he always conducted his buſineſs, having rendered him famous among *foreigners*, and known at court; *Charles* VII. called him to the miniſtry, and intruſted to him the management of his finances, making him *grand treaſurer*, A. D. 1444.

His elevation did not in the leaſt interrupt his merchandizing, but, on the contrary, excited him to continue it with greater reputation and ſucceſs; but then this generous merchant, whoſe heart was yet greater than his fortune, had the moſt noble views in his *commerce*, and preferring the intereſt of the *ſtate* to his own, it was more in his own funds than the prince's exchequer, that he found reſources, not only to re-eſtabliſh the kingdom, exhauſted by a long war, but to carry on enterprizes againſt the ancient enemies of the *French* nation, and to re-unite to the crown, one of its fineſt and richeſt provinces, which had been for a long time in the hands of the *Engliſh*.

In effect, very ſoon, armies were raiſed and maintained ſolely at the expence of this diſintereſted miniſter: He adviſed the conqueſt of *Normandy*, and he alone was at almoſt all the charge. When he went in embaſſy to *Rome*, a fleet of twelve ſhips, which accompanied him, belonged to him entirely, and it was he that was at all the expence of fitting them out. In a word, after *Charles* had, as it were aſſociated *James Coeur* in the government of the ſtate, there was nothing in *France* that was great and conſiderable, which was not ſupported by the credit of this ſage and rich merchant, and wherein he did not employ the better part of the great effects that aroſe to him from his *trade*. Mr. *Aſtruc* ſays, his very diſgrace, which it appears he never merited, ſeemed to have rendered him illuſtrious.

It is true that the people, accuſtomed to fancy a myſtery and prodigy in things that ſurprized them, and were above their comprehenſion, reported, that *James Coeur* owed his fortune to the ſecret of making gold; but, the truth is, that all the philoſopher's

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ſtone of this fortunate and able merchant only conſiſted in his great commercial connections; and that he knew no chymiſtry more proper to operate the tranſmutation of metals, than the immenſe traffick that furniſhed him with thoſe rich merchandizes, of which his ſtorehouſes were always full, and which he exchanged with ſo much profit againſt gold and ſilver, that an ignorant and credulous populace attributed it to the perfection of the grand work, which it imagined he had the good luck to find out.

Another example of fortune and glory, to which private men have attained, by the means only of *commerce*, is not leſs remarkable, though more illuſtrious.

THE HOUSE OF MEDICIS.] The family of *Medicis* has been always praiſe-worthy and commendable, both for the antiquity and nobleneſs of its origin, and the greatneſs of its credit and riches.

From the eleventh century it has had great men, and there is found in hiſtory, an honourable ſucceſſion of the race of the *Medici*, who, in this firſt riſe of their houſe, were equally diſtinguiſhed by the luſtre of eccleſiaſtical dignities, by the honour they acquired in the profeſſion of arms, by that which they obtained in the government of ſtates, and in the chief magiſtracies of cities.

It was not, however, till the beginning of the fifteenth century, that this family, reſerved to ſo great a fate, ought properly to count the epocha, or æra of its elevation; and it is to *Coſmo de Medicis*, that famous citizen of *Florence*, who ſo juſtly merited the name of great, father of the people, and deliverer of his country, that it is indebted for the firſt, or at leaſt the moſt ſolid foundations of a grandeur, which would be hardly credible, did we not ſee, ſo lately as the year 1722, their fortunate and illuſtrious poſterity governing with ſo much ſagacity, the deſcendants of thoſe people, who formerly owed their liberty to the courage and prudence of this firſt citizen of their republic *.

In effect, after this great man had ſet in motion the wheel of fortune, which was to raiſe his houſe ſo high, there were but very few dignities, honours, titles, or alliances, by which this family was not illuſtrated; and, in leſs than a century, it gave four ſovereign pontiffs to the church, two queens to *France*, and to the ſacred college more celebrated ſubjects than any other houſe, even ſovereign ones, had given to it till then.

It was nevertheleſs *commerce* only that was the ſource of ſo much renown; the anceſtors of *Coſmo*, following the cuſtom of the nobility of *Italy*, had not neglected this reſource, to ſupport them in the honours either of the camp or cabinet; but he, more fortunate, or more intelligent, had made ſo large a fortune, that he became even comparable to ſovereigns for his riches, and he was always courted and regarded, on account of the great influence which he preſerved all his life, in the affairs of *Italy*.

Lawrence, his brother, who, to the name of great, which he merited as well as *Coſmo*, added that of *father of letters*, was ſo well known at the *Porte*, on account of the factors which he maintained in all parts of the *Levant*, and of the great number of ſhips which he ſent, that *Bajazet*, the fierce *Ottoman* emperor, not only always regarded him as one of his allies, but even honoured him with the name of his friend.

All the other *Medici*, who came after theſe two great men, and were elevated to the chief honours of their republic, had the wiſe policy to imitate them, and in no manner to deprive themſelves, by a falſe delicacy, of the utility of commerce; and when, in fine, the great qualities and merit of another *Coſmo*, had raiſed this houſe to the ſovereignty of *Florence*, neither he, nor his ſucceſſors, thought it unworthy of them, to continue to ſeek, in an honourable mercantile line, the means to ſupport, with great credit, the ſplendor of a rank, which, in ſome ſort, was owing to it; and, to this very day, the palaces of the grand duke are never ſhut either to tradeſmen or merchants.

SIR THOMAS GRESHAM.] The third inſtance we ſhall produce is, that of SIR *Thomas Greſham* an *Engliſhman*, who, though he did not attain to the very high honours of *James Coeur* or *Coſmo de Medicis*, does not yield to either in the ſervices he performed for his country, or the riches and credit he acquired by merchandize. The general incidents

* This illuſtrious houſe became extinct by the death of *Gaſton*, the laſt grand duke of *Florence*, to whom the late emperor of Germany, then duke of *Lorrain*, ſucceeded.

ents of the life of this illuſtrious citizen of *London* are ſo well known, and are ſo amply lated in all our hiſtories of *England*, and lives of our eminent men, that I ſhall only cite ſuch particulars as may ſerve to place him in many reſpects upon a level with the *renchman* and the *Italian*.

Mr. *Thomas Greſham* was the youngeſt ſon of Sir *Richard Greſham* an eminent citizen of *London* in the reign of *Edward* VI. he ſucceeded his father in the office of agent to the king for the negociation of his loans and the ſale of his wool at *Antwerp*; and in that city he laid the foundation of his fortune. It was, at that time, the cuſtom for the kings of *England* to borrow money of the *Flemings* for any exigencies of the ſtate, and, by miſmanagement, the crown was become conſiderably indebted to the principal merchants at *Antwerp*: Upon which occaſion the *Flemings* demanded moſt exorbitant intereſt, and ſometimes the royal jewels were pledged for the payment. By his prudent management he not only cleared the king by diſcharging all his debts, but in the reign of queen *Elizabeth* he put an end to the diſgraceful and extravagant method of borrowing from foreigners, by delivering a plan to the queen for negociating loans for the public ſervice at home, a plan which pleaſed her own ſubjects, and occaſioned a great ſaving to the nation. For this ſervice her majeſty conferred on him the honour of knighthood. He eſtabliſhed the credit of the *Engliſh* merchants with the *Hanſeatick* towns, and he was highly inſtrumental in bringing over a great number of the perſecuted *Flemings* who fled from the tyranny of the duke *D'Alva*, the *Spaniſh* governor of the *Netherlands*, under *Philip* II. At his own expence, he built the *Royal Exchange* in *London*, and founded a College, known by the name of *Greſham* College, endowing it with an income for the ſupport of a profeſſor of each of the liberal ſciences, who continue to this day, and read public lectures in divinity, law, phyſic, aſtronomy, geometry, muſic, and rhetoric. He alſo bequeathed a great many donations of annual ſums to public charitable inſtitutions; yet this did not prevent his making ample proviſion for his widow, and he died very rich in the year 1579.

COMMERCE OF THE FRENCH.] Mr. *Savary* ſuppoſes it a matter of ſurpriſe, that among ſo many examples of the advantages that commerce produces in the ſtates where it flouriſhes, *France* had not, at the time of his writing, furniſhed any one; it is owned, he ſays, with regret, that, in regard to *commerce*, the *French* at preſent are leſs in a condition to ſerve as a model, than they are in need of being animated by the example of others.

And then proceeds with making the following queries, and giving the ſucceeding account of the aptitude and qualification of the *French* for *trade*; and, though he ſeems a little partial in favour of his countrymen, I think he exaggerates nothing in his deſcription of the kingdom.

" Will this generous nation, ſays he, ſo capable of the greateſt enterprizes, be inferior to others in this thing only, whilſt ſhe greatly ſurpaſſes them in every thing elſe? No ſurely: and excepting her haughtineſs, which often made her regard *trade* as little worthy of her, or her impatience, which almoſt always diſcouraged her on the firſt difficulties, there is certainly no one that could carry on *commerce* with more advantage, or to whom, I may affirm, it is more proper, when ſhe will apply herſelf to it in earneſt."

" What is there in effect wanting to *France* of all that is neceſſary to carry on a conſiderable trade?"

" She has an infinite number of inhabitants, hardy, enterprizing, laborious, and, at the ſame time full of genius, addreſs, and induſtry."

" Her lands, which are as fertile as any in the world, deny her hardly any ſort of fruits, proviſions, drugs, or other merchandize."

" Her different provinces, according to the diverſity of their ſoil, produce in abundance, corn, wine, ſalt, and every neceſſary to the ſupport of life."

" There is found ſilk, flax, and hemp, for all ſorts of ſtuffs and linens, or other works which are made of theſe materials."

" Its paſtures feed an almoſt incredible quantity of large and ſmall cattle, which ſerve for nouriſhment, and to furniſh excellent hides and fine wools, and its mines produce the moſt neceſſary metals and minerals for arts and trades, and for the fabrick of manufactures."

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" If its merchants inclined to commerce, the two ſeas, which waſh its coaſts, open to them excellent ports, and offer them the conveniency for carrying it on to the four quarters of the world."

" If they will content themſelves with a home trade, the *French* manufactures, or thoſe that are imitated from ſtrangers, are arrived to the laſt degree of perfection, by the wiſe regulations, and by the attention of the magiſtrates of the police, and the inſpectors appointed to take care of their performance."

" In a word, it may be ſaid, and I ſhall ſay it without exaggeration, that *France* reunites at home all the advantages of *commerce*, which are found divided among the other people of *Europe*, and, that, being ſufficient to itſelf, it can abſolutely paſs without other nations, and content itſelf with its own abundance, whilſt they, on their parts, will find it difficult to ſubſiſt without our ſuccours, and that *great commerce*, of which ſome, and with a great deal of reaſon, are ſo proud, would ſoon be ſeen to fall, if they ceaſed to receive from us that infinite number of merchandizes which are neceſſary to them, and which it is with difficulty they can find elſewhere."

" It is this truth ill underſtood, and urged too far, that has given room to that paradox ſo dangerous, which they of this way of thinking would eſtabliſh in theſe latter times; that *France* ought to carry on no *commerce* with ſtrangers, and that ſhe would always be ſufficiently happy and flouriſhing, if ſhe did not want labourers and ſoldiers."

" The neceſſity of the one and the other is indiſputable; without ſoldiers our frontiers would remain open to our enemies, and the kingdom without defence; and without labourers to cultivate our lands, they would be no longer ſufficient for our ſupport. But upon what ſhall the pay and maintenance of our troops be eſtabliſhed, if *commerce*, which is the moſt fruitful ſource of the riches which enter our king's exchequer, be taken from us? And what will the farmers do with their crops, though never ſo abundant, if they have no longer an opening to get rid of their ſuperfluity; and, by want of *trade* ſee thoſe proviſions miſerably periſh on their hands, which would have inriched them, if they had paſſed into thoſe of their neighbours?"

" The merchants then are a third order of perſons, of which *France* has need, and who are not leſs neceſſary to *her* than her ſoldiers and labourers; and *commerce* is a profeſſion, without which all would languiſh in the kingdom, and the inhabitants would ſink under their own abundance, as they could conſume neither the whole at home, nor have the liberty to carry a part abroad."

" It is ſufficiently comprehended, that by *commerce*, ſuppoſed ſo neceſſary to *France*, and for which it is known, that the *French* are at leaſt as fit as the other nations of *Europe*, is not to be underſtood that trade which is carried on in our provinces, by the communication which they have with one another, of the natural productions, or the works of art, that they have each at home, for this would be always flouriſhing enough, if there was a care at the ſame time to carry on that abroad; but it is the *commerce* which may be maintained with foreigners that is principally in view, whether they come to our ports to carry away thoſe merchandizes of which they have need, or whether we ſend our ſhips to load with thoſe which they have and we want."

" It is true, that, for long voyages, *France* has already at home, a company of *commerce*, of which the firſt ſucceſs ſeems to promiſe, that it will not one day be any thing inferior to the more celebrated ones eſtabliſhed among our neighbours; ſo that, without encroaching upon the vaſt grant of a company ſo profitably formed and ſo wiſely conducted, I ſhall content myſelf to animate the *French merchants* to ſuch other objects of *commerce* as they may ſhare with the other nations of *Europe*, or even that they may carry on with a greater facility and profit than they."

" Theſe hopes, with which I dare flatter our merchants, are not falſe nor even dubious. Whoever ſurveys the parts of *Europe* where the *Engliſh* and *Dutch* carry on their moſt conſiderable commerce, *Spain*, for example, or the towns of the *North* and the *Baltick Sea*, will ſee what nation is moſt likely to ſucceed."

" Almoſt all the neceſſary merchandizes for thoſe important branches of commerce are found in *France*; on the contrary, *England* and *Holland* have hardly any."

" We have for *Spain*, ſtuffs of gold, ſilver, and ſilk, clothes, woollens, linens, paper, hats, all ſorts of ſtockings, cards, laces of ſilk and thread, mercery, iron wares, and many others. The North cannot do without our wines, brandies, vinegars, ſalts, prunes, cheſnuts, and walnuts, ſo that it will preſently be decided, to which nation

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the loading of ſhips for the *North*, or *Spain*, is moſt eaſy; whether to the *French*, who, without borrowing any thing from others, have, within themſelves wherewith to make up an entire cargo; or to the *Engliſh* and *Dutch*, who come to ſeek in *France* what they want, and who, deſtitute of this ſuccour, would be obliged to ſend their ſhips half laden, and without the proper aſſortments for thoſe two countries."

"It is alſo the ſame in proportion with all other trades, by which the *French* may enter into competition with their neighbours."

"In regard to profit, it is as clear, and ſhorter. Whoever ſells at ſecond-hand can make but one gain, whilſt he that ſells at the firſt acquires two; the *Engliſh* and *Dutch* are in the firſt caſe, the *French* in the ſecond; ſo that thoſe can only benefit themſelves on the price, which the merchandize they ſell in *Spain* and the North coſt them in *France*, and theſe add yet to the ſaid profit, that which was made on the firſt ſales of ſuch merchandize."

"This is not enough; the advantage of returns is yet all entirely on the part of *France*, ſince the *French ſhips*, by bringing back the *Northern* and *Spaniſh* commodities, take away from ſtrangers thoſe immenſe profits, which they uſed to make on us, when they brought the ſame merchandizes into our ports."

"One cannot on this ſubject help expreſſing ſome concern at not ſeeing eſtabliſhed in *France*, that wiſe policy of the *Engliſh*, who, by their *act of navigation* in the year 1660, ordained, that none of the merchandizes and products of *Europe* be brought into *England*, nor the ſtates that depend on it, but in ſhips appertaining to Engliſh ſubjects, or from the places of their manufacture and growth; and that none of the merchandizes of the growth of any of the Engliſh Colonies or that may hereafter become ſo, of *Aſia*, *Africa*, and *America*, ſhall any longer be brought in but in *Engliſh ſhips*, or *thoſe appertaining to the Engliſh*."

"A policy certainly both prudent and equitable, and, if it had place among us, would open our ports to ſtrangers, who ſhould bring the merchandizes of their country, and wiſely ſhut them againſt thoſe who, having nothing of their own growth, come to ſell us thoſe at a dear rate which they have collected from all parts of the world; and who, flattered by our indolence, or, it may be, by our vanity, have inſenſibly accuſtomed us to receive only from their hands, at an exceſſive price, what it would be eaſy for us to get on much better terms, if we would only take the pains to ſend for them."

"It may probably be alledged, that, as the *French Marine* is not in any degree comparable, but much inferior, to that of their neighbours, with whom they are invited to become competitors, there is but little appearance that they ſhould ever find the facility or advantages with which they in vain were flattered in carrying it on."

"And it muſt be confeſſed, that, in *maritime ſtates*, *commerce* and *navigation* ought to go hand in hand, for there is ſo ſtrict and intimate a tye between the one and the other, that commerce is without ſtrength, whilſt the *marine* is languiſhing, and the weakneſs of the one neceſſarily draws on the fall of the other."

"But beſides, that our ports are not ſo unprovided with ſhips of war, as to leave the *French* merchants at any time deſtitute of convoy and guards, to favour and protect their trade; what doubt is there that, even on this part, *France*, when ſhe pleaſes, need not yield to any other power whatever."

"Our neighbours are obliged to fetch from abroad, the greateſt part of their naval ſtores; wood, iron, cordage, ſails; all theſe come to them from foreigners; inſtead of which, our provinces eaſily furniſh us with the beſt part of that we have need of for the building and fitting out our navy."

"Some of them have wood proper for the bodies of ſhips; and there are found in the mountains, others fit for making the reſt of their materials; there are, in many, mines of copper and iron ſufficient to ſupply our yards and docks; and all, in general, are ſo abundant in flax and hemp, for making ſails and cordage, that it is even from us that other nations receive the greateſt part of thoſe they conſume in their rope-walks, or that their weavers, make into cloth proper to fail their veſſels."

"We are no more in want of proviſions or ammunition, but are even in a condition to ſpare part to others; and, to man our ſhips of war and merchant fleets, we have more than ſixty thouſand ſailors, diſtributed in five claſſes, of which the rolls are renewed annually, and of which the one is always accounted engaged, from the begin-

ning of each year, to ſerve in the king's ſhips, and the four others are reſerved for the merchants' ſervice."

"Theſe hopes, which are founded on ſo many advantages, that might render our marine flouriſhing, either for war or trade, are certainly not in the number of thoſe ideal projects, that it is not poſſible ever to carry into execution."

"Thoſe times, ſo glorious to the *marine of France*, 1690, are ſtill remembered, when our naval forces, equal to thoſe of our enemies, obtained the victory over the united fleets of the two powers, who each in particular would have attributed to itſelf the empire of the ſea; and we have not in the leaſt forgot, that, during all the war which was terminated by the treaty of *Ryſwick*, 1697, our privateers, ſuperior to thoſe of the *Engliſh* and *Dutch* together, took from one of them ſo great a number of ſhips, that their merchants, who avow that their loſs amounted to more than three thouſand veſſels, were obliged to carry their complaints to their parliaments; and the *trade* of the other was ſo diſturbed or impeded by the fortunate cruizes of the ſame privateers, that this was one of the principal reaſons that made them deſire a peace, and, in ſome ſort, to demand it with eagerneſs."

"It is not, however to be denied, that events which prudence could not foreſee nor courage repair, have weakened the *French* marine; but why ſhould we loſe the hopes of ſeeing it recover? That which ſo happily ſucceeded under the reign of *Lewis* XIV, will it be impoſſible, if undertaken, to proſper under that of *Lewis* XV? A young monarch, in whom ſhine ſo many great qualities, that they ſeem already to foretel the happineſs and glory of *France!* And an eſtabliſhment, which was ſeen puſhed on almoſt to perfection, under the miniſtry of monſ. *Colbert*, and of the marquis of *Seignelay* his ſon, why may it not gather new ſtrength, ſupported by the care and experience of a prince who has recorded his firſt campaigns at ſea by a victory, and who labours with ſo much application to reſtore us a *marine*, capable of making our *colours* always reſpected; and, at the ſame time, to put our merchants in a condition of carrying on, in all parts of the world, a *commerce*, for which they have ſo much facility and advantage."

Mr. *Savary* here finiſhes his ſentiments of his country and the *French* nation; and, I think, he has proved a true prophet, in regard to their *commerce*, which has been greatly extended and increaſed ſince his time, to the no ſmall detriment of ours. They were at leaſt a century behind us in mercantile affairs, and it is a matter both of ſurpriſe and concern, that they have in any ſhape exceeded us; as deſpotick governments are not calculated for proſperous commerce, and had not *Lewis* XIII. and XIV. ſtepped out of the common track of arbitrary kings, in order to protect and render it flouriſhing, we ſhould never have ſeen that nation, from competitors with, become ſuperior to us in any branch of it; but the good regulations made in thoſe kings' reigns, and ſince continued, added to the fertility of the ſoil and *temper* of the people, who can content themſelves with a leſs expenſive way of life than we are unhappily fallen into, have enabled them to carry many of their commodities cheaper to market than our higher wages, and dearer living, will permit us to do, and conſequently robbed us of the ſale of our inferior ſorts of woollens, which they have been able to imitate; but, as I ſhall ſpeak of this when I come to treat of *commerce in general*, I ſhall only add here, that I fear they now equal us at leaſt in the diſpatch of their home manufactures, though I hope not in the products, and trade of their plantations, their ſugar colonies only excepted.

Mr. *Savary* having left the *Engliſh* out of this hiſtorical deduction of trade and commerce, as if they had been a people without any concern in it, I can only impute it to that deference he every where pays to his father's judgment, whoſe malicious inſinuations againſt us, in his *Parfait Negociant*, the ſon muſt have contradicted, had he treated us with the ſame impartiality he has others; to avoid which, and not expoſe the weakneſs of his envious parent's ill-grounded and unjuſt invectives, we may preſume were the motives that induced him to paſs us over in his account of commercial nations, and made him prefer leaving a chaſm, rather than a blot, in his otherwiſe valuable works; though he is not wholly to be acquitted from inheriting or adopting part of his father's partiality, as he has copied ſome of his aſperſions, when he ſpeaks of us in the body of his dictionary; to confute which, and do juſtice to my countrymen, I ſhall endeavour to improve this opportunity by demonſtrating his partiality, and ſupplying his defect, that we may appear in the true light we ought, in the hiſtory of the

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European commerce; and in order thereto, I ſhall here only briefly mention what occurs to me concerning our firſt engagements in commerce, and refer my reader for a more ample account of its progreſs and preſent ſtate of improvement to the ſequel of the work.

COMMERCE OF THE ENGLISH] Though it muſt be allowed that the *Engliſh*, in reſpect of moſt other *European* nations, were late beginners in univerſal commerce, yet they have improved in it with an amazing rapidity.

It is many ages ſince they knew the value of a naval power, and were taught by the *Romans* how neceſſary this would be for their defence and ſupport, as well as conducive to their *commerce* with other nations; the former, we have ſeen before, were maſters of the art, and conſequently in a capacity to give leſſons; they knew the great advantages derived to kingdoms from it, and indeed that this only could make a nation flouriſh. They conſidered how capable of improvement our country was, and being ſettled among us, were deſirous of rendering this union as advantageous as poſſible, and, having met with a people brave and daring as themſelves, and in every reſpect fit to undertake any hazardous enterprizes, they would certainly have raiſed *commerce* to a flouriſhing pitch, had not their own inteſtine broils called them home, and, *ours* on this occurrence increaſing, left commerce to languiſh, as it did for ages after, till our victorious *Edward* III. and afterwards the glorious queen *Elizabeth*, animated their ſubjects to an imitation of their neighbours, and, by proper encouragements, led them in to ſhare the advantages which hitherto other nations only had reaped, excluſive of them. The introduction of a few walloon manufactures of woollen cloths from *Flanders*, and the privileges granted to them by *Edward*, laid the foundation of the *Britiſh* woollen manufactories; but to *Elizabeth* was reſerved the immortal renown of completing the great commercial revolution, which took place at that memorable æra.

Voltaire, who, as an hiſtorian, is by no means partial to the *Engliſh* nation, gives the following account of this happy event. "From the firſt beginning of *Elizabeth's* reign, the *Engliſh* applied themſelves to manufactures: The *Flemings* being perſecuted by *Philip* II. king of *Spain*, removed, in large bodies, from *Flanders* to *London*, bringing with them an increaſe of inhabitants, induſtry, and riches. This capital, which enjoyed the bleſſings of peace under *Elizabeth*, cultivated likewiſe the liberal arts, which are the badges and conſequences of plenty. In a word, *London* was enlarged, civilized and embelliſhed; and, in a ſhort time, one half of the little iſland of *Britain* was able to counterbalance the whole power of *Spain*."

The beſt principles of commerce derived from the ancients, were adopted by the wiſe and active miniſters of *Elizabeth*. She ſent out ſkilful navigators to make diſcoveries in *America*. She eſtabliſhed colonies; and kept up a maritime force for the protection of the commerce of her ſubjects at ſea. In fine, ſhe founded the *Eaſt India* and other commercial companies; and it was under her glorious adminiſtration, that the *Engliſh* gained a ſuperiority on the ocean, which has ever ſince been preſerved; and on the ſupport of which, not only our commercial intereſts, but our independent exiſtence as a nation depends.

The increaſe of our commerce has conſequently been that of our power, which is happily riſen to the ſummit of human glory, as there is no potentate on earth, who can equal our maritime force, become now the bulwark of our country; and may it always continue unrivalled and triumphant whilſt time endures!

It is in this place, that I muſt beg leave to congratulate my countrymen on the happy ſituation of *Great Britain*, which is the beſt calculated that can be conceived, for the ſecurity, eaſe, and convenience of its inhabitants as a commercial people. The ſouthern diviſion, ſtill diſtinguiſhed by its ancient name, *England*, is bounded on the eaſt by the *German* ocean; and on the weſt by the *Atlantic*, which, by their union, form the *Britiſh* channel, its barrier to the ſouth. On the north, it is defended by the *Deucaledonian* ſea; and a facility of communication is afforded to this vaſt body of waters ſurrounding the *Britiſh* iſles, not only by a number of excellent harbours and commodious ſea-port towns; but by ſundry large navigable rivers flowing from the inland provinces, of which the Thames is the principal.

This happy ſpot thus admirably protected by nature from the incurſions of neighbouring ſtates, and enabled by her inſular ſtation, to keep conſtantly on float, a maritime force for the farther ſecurity of her commerce, whenever its ſafety but appears to

be endangered, is likewiſe indebted to the indulgent bounty of providence for every neceſſary and convenience of life; and is bleſſed with a temperature of air, which, while the inhabitants lived according to the ſober laws of nature, and ſought not the deſtruction of their health by the uſe of ſpirituous liquors, afforded more frequent inſtances of remarkable longevity, than any other part of the known world. But, notwithſtanding a viſible, and much to be lamented degeneracy, the great body of the people, by whoſe induſtry the manufactures and commerce of the country is ſupported, are juſtly diſtinguiſhed for their ingenuity, perſeverance, diligent application to buſineſs, and ſuperior expedition in completing the works they undertake.

Our lands may juſtly be counted ſome of the moſt fertile, and their products of fruits, proviſions, *&c.* as plentiful and as good as any in *Europe*, and our merchandizes more than other countries can boaſt of.

The different counties, according to their ſituation, produce corn, and all neceſſaries of life in abundance, which, on many occaſions, have preſerved ſeveral of our neighbours from famine.

We have hemp and flax for the manufacturing our linens and canvas, now brought to perfection, and our paſtures feed an almoſt infinite number of cattle, which not only ſupply our markets with excellent food, but furniſh us with fine wools, and the beſt leather in the world.

Our mines produce iron, lead, tin, copper, coal, *&c.* in abundance, and our foreſts and woods are ſo well ſtocked with oak for ſhipping, as ſeems to promiſe, under well-regulated laws, an inexhauſtible ſupply.

Our ſeas are well filled with their finny inhabitants, which, according to the ſteps taken by the legiſlature for the encouragement of our fiſheries, and the ready concurrence of our merchants in promoting ſo beneficial a deſign, muſt prove productive of immenſe riches to the nation, beſides occaſionally providing comfortably for our poor, which advantages have for many years paſt been reaped by our induſtrious neighbours.

COMMERCE OF THE SPANIARDS.] I think a deduction of this nature ought not to be cloſed without mentioning a word of the *Spaniards*, who, like us, have been paſſed over by our author in ſilence; for, though they have been tardy in finding out the advantages nature has given them for *trade*, and have long remained blind to their own intereſt, yet their *commerce* is not ſo deſpicable and ſmall as to be overlooked when we are treating of commercial nations.

Their diſcovery of *America*, and their ſubſequent ſettlements on that continent, gave birth to their trade and riches; for, though a potent nation before, in dominion, they wanted the ſinews of power, which the mines of *Mexico* and *Peru* have ſince produced them.

They have very conſiderable ports, equally well ſituated for commerce, both on the *Biſcayan* and *Mediterranean* ſeas, and where large concerns are tranſacted though principally by foreigners, as the *Spaniards* in general conſider *traffick* to be a mean employ, and conſequenrly a derogation from that gentility they almoſt all affect being born to; however, they have formed ſome very conſiderable companies among them, as that of the *Philippines*, *Guipuſcoa*, and one lately eſtabliſhed at *Seville* for the manufacturing of woollens, ſtockings, hats, ſilks, and moſt other commodities they formerly imported for their *American* trade; and, having received great encouragement from the crown for perfecting their other manufactures, they have, for ſome time paſt, clothed all their troops with their own cloths, and the king's wearing them himſelf, and prohibiting the importation of foreign ones, has brought their fabrics into ſuch great repute, that they are daily increaſing; and the uncommon privileges granted the weavers, it is to be preſumed, will, in time, animate them to new engagements, and teach them to imitate the other woollen fabricks of *Europe*, as they have been ſo ſucceſsful in copying their cloths, more eſpecially if they can procure workmen from their neighbours to aſſiſt them, as they have lately endeavoured, and in ſome degree, ſucceeded in, from hence.

Their ſilk manufactories have likewiſe kept pace with their woollen, and both their *Weſt-Indian* and *European* dominions are now principally ſupplied by them, as they were formerly from *France*, ſo that their eyes having been opened to theſe advantages, both *Old* and *New Spain* feel the ſalutary effects of this diſcernment, and, if the ſame meaſures are purſued as have been ſo happily begun in favour of the ſubject, we may reaſonably

nably expect, in a few years, to see them a more flourishing people than it was possible for them to be, till rouzed from their former indolence and neglect, to a just sense of the advantages that industry and application offers them.

I might here mention their tunney fishery, and some other instances of their improvements, but shall refer expatiating or descending to particulars till I come to treat of them in the general body of trade, and only add here an observation, that as the *Spaniards* have improved the different manufactures I have mentioned, their neighbours have proportionably found a decay in their's, which can only be remedied by seeking other channels for the sale of their commodities, though I must confess, I think this to be despaired of, when the common paths of trade are become so beaten, and every branch of it so prejudiced by interlopers, except the following sheets open new scenes, which, by care, may be improved to the adventurer's advantage. I should here mention something of the *Swedes*, *Danes*, &c. but shall refer my reader to what I shall afterwards say of their trade, when I come to describe it minutely.

* Dr. Garcin's *Account of the Origin of Navigation and Commerce.*

Historians seem hitherto to have forgot, by the little they have said, that the *Arabians* were the first navigators, and the first people who opened the *commerce* between *Asia*, *Africa*, and *Europe*; this is a thing, however, very easy to be proved, notwithstanding the invention of navigation is attributed to the *Tyrians* and *Egyptians*, at the beginning of this historical deduction.

The situation of their country, which is, in this regard, the most favourable in all respects, at first naturally brought them thither. As *Arabia* is a very large peninsula, washed by the sea on three sides, and its entry on the fourth being the most difficult, by reason of the extent of its deserts, which are filled with sand, and without water, necessity induced this nation, one of the most ancient, in order to procure an advantageous communication with others, to open passages by water; to invent the first marine vessels, and to form itself courageously to navigation; it had so much the more cause to improve, and become acquainted with its seas, as it was no great distance from the *Indies*, which, as is known, was at all times fuller of riches than any other part of the world.

This practice being attained, it was much easier for its inhabitants to pass by water to many of their neighbours, than to traverse deserts so dangerous, and to make such great tours, either to go out of, or to return to their country. Thus it was by their fleets that they correspond wherever there was a sea, and by caravans on the land side to the *Mediterranean*; it was, in fine, by these powerful means, and by the *Arabians* only, that the most sought for, and precious things of all the *Indies*, past from east to west, in the most ancient times, and in those which followed, until that of the emperor *Augustus*.

This nation, according to historians, has been the richest of the world, in the earliest ages, as we shall soon see by relating what they have said of it; and this is one of the strongest proofs of its *ancient commerce* with the *Indies*, and from thence with the countries which border on the *Mediterranean*; for the *Tyrians* and *Egyptians* were not formerly flourishing in their *commerce*, otherwise than as the industry and riches of the *Arabians* made them so, who furnished them, under large profits, with all the merchandizes of the *isles*, and of the maritime coasts of *Asia*, the same as the *Portuguese* and *Dutch* have sometime since done in *Europe*, and it is by the same *commerce of the Indies* that they are enriched. The *oriental seas* was to the *Arabians* what the *Mediterranean* was to *Phœnicia* and *Egypt*; these three nations enriched themselves mutually by the trade of these two seas, each having laboured on its part for the propereſt means to cultivate it by navigation in the two seas, and by caravans through the lands that separate them.

It is known by very ancient experience, that the richest countries are not ordinarily such, but by the means of *commerce* and *navigation*. The *Sabeans*, an *Arabian* people, who inhabited the countries bordering on the *Indian* and *Red Seas*, were incomparable in their sumptuousness and riches: one need only read *Agatharchides*, *Diodorus Siculus*, and *Strabo*, to be convinced of it by the detail which they give. They drained, says the

* Formerly an eminent physician at *Neufchatel*.

the firſt of theſe hiſtorians, in *Photius*, the treaſures of *Aſia* and *Europe* by the exchange they made of the moſt precious things. They ſurpaſſed, ſays the ſecond, *lib.* III. by the the riches and abundance which they had of all precious things, not only thoſe of *Barbary*, their neighbours, but alſo all other nations. Conſiderable ſums were neceſſary to purchaſe a middling quantity of their merchandizes; theſe hiſtorians record, that theſe people, ſo rich by their *commerce*, made ivory, gold, ſilver, and precious ſtones, to ſhine in their furniture, upon the doors, columns, walls, and roofs of their edifices; and that they poſſeſſed a very great quantity of gold and ſilver veſſels; they relate, that their expences were enormous in all things, even in works of the moſt admirable ſculpture and engraving; in a word, that their magnificence was unequalled, which demonſtrates that this nation was ſkilful, bold, and ventureſome in the *Indian* trade and navigation, and that it was by her that the *Tyrians* and *Egyptians* flouriſhed ſo much in theirs, and upon the ſame merchandizes which they received and paſſed to the other weſtern nations, the moſt remote. The prophet *Ezekiel*, chap. xvii. verſe 22, in addreſſing himſelf to the city of *Tyre*, ſpeaks of this nation of the *Sabeans* under the names of *Sheba* and *Raamah*, which were two places of *Arabia*. *The merchants*, ſays he, *of* Sheba *and* Raamah *were thy* factors, *making thy fairs valuable in all ſorts of the chiefeſt ſpices, and with all ſorts of precious ſtones and gold:* This is a ſure teſtimony of the antiquity and the opulence of its *commerce* which it had with the *Indies*.

It was this opulence which determined *Alexander the Great* to make *Sheba* the capital of his empire; and tempted the *Romans* to its conqueſt in the time of *Auguſtus*; a time in which they began better to know the *oriental ſea*, and the coaſts which limit or bound the weſtern.

We may believe, as the greateſt part of the ancients did, that the precious merchandizes of the *Arabians* were all the growth of their own country; but it is a miſtake, they being carried to them; for it is certain that *Arabia* has never produced of itſelf, the ſixth part of its riches. Of all the aromatics only *incenſe*, *balſam*, *myrrh*, and *calamus aromaticus*, grow there; the two laſt of which were not ſought for, only as they were deemed to be ſomething better than thoſe which grew in the other parts of *Aſia* and *Africa*. It may alſo have a little gold, but in no quantity, as ſome of the ancients imagine; the *Arabians* brought it from *India*, the ſame as they did other aromatics, precious ſtones, and rich merchandizes of all ſorts. *Strabo* ſeems to inſinuate ſo in ſaying, that they changed their aromatics and precious ſtones againſt the gold and ſilver of ſtrangers. One may be perſuaded, that in ſome parts of *Aſia*, the *origin* of all theſe things is yet near the ſame as it was in former times, all the difference being that it is now infinitely better known.

Incenſe, in reality, was to them of very great advantage, as they furniſhed all the weſtern nations with it, who were then *pagans*, and conſequently conſumed infinitely more than they do at preſent: But, as the ancients were paſſionately fond of all the moſt exquiſite aromatics, thoſe which the *Arabians* brought from *India* making the greateſt number, produced alſo their greateſt riches.

The *aloe wood*, *caſſia*, and *cinnamon* which are mentioned in many paſſages of ſcripture, and in the moſt ancient hiſtorians, made, beyond diſpute, after the gold, the principal branch of their *commerce*. *Malabar*, *Ceylon*, and *Sumatra*, or *Malacca*, were really the principal places where their fleets often went to take in their loadings, as it was only from thence that they drew all thoſe rich merchandizes; theſe were formerly much better eſteemed than they are at preſent; and, as this nation ſolely ſupplied all the countries of the world that wanted thoſe commodities, this is yet another demonſtrative proof of their ancient navigation to the *Indies*.

It is nevertheleſs a matter of ſurpriſe, that ancient hiſtory either does not ſpeak of it at all, or if it does, it is in a manner very obſcure: This proceeds from *Arabia* being very little frequented, and conſequently very little known to other nations. The great difficulty and danger of traverſing its ſandy and arid deſerts, and of being ſheltered from the robberies which a part of its inhabitants were always given to, in beating the field, plundering the caravans, and ſtripping the travellers and merchants, were the cauſes that our firſt anceſtors could not be informed about it until the time of *Alexander*, or even till that of *Auguſtus*. We may moreover add, that their navigation was but little known even to the time when the *Portugueſe* went to *India* by the *Cape of Good Hope*, and that thereby they ran away with that rich *European trade* which the others carried on by

means

means of the *Egyptians*, and these by that of the *Venetians*. They were therefore always masters of the *Indian Seas*, by their navigation, till then, as is well known even to all the *Indians*. This *navigation*, as well as their *commerce*, was indeed a little disturbed by the *Romans*, but this was only for some time. Another cause, which made their navigation unknown in ancient times, is that the *Arabians*, the better to preserve the *commerce of the Indies*, which they found so advantageous, always took care to conceal from strangers who lived towards the *Mediterranean*, the voyages which they made on the *oriental seas*, the routes or courses which they used, and the origin of the merchandizes which they brought in, and which so greatly augmented their riches.

Besides, in those times, the arts which facilitate the intercourse of nations were wanting, which made history so ignorant of a country so distant. These are geography, printing, the conveniency of posts, and the improvements in navigation; thus the *Arabians* always succeeded in their intended concealment, with the view of making their commerce lasting, and to attract thereby the greater profits.

And, to have the thing succeed the better, and to impose on the foreign nations, who so very earnestly enquired after their spices, they invented fables or pretended difficulties that subsisted, above all, in regard to the *cassia* and *cinnamon* on which they made the most considerable profit; and affirmed them to grow in the middle of their country, but in places almost inaccessable, and so dangerous, that they could not procure but a very small quantity, with infinite industry and trouble. The whole contrivance is recorded by *Herodotus*, *lib.* III.

It was this which made all antiquity believe, that these spices or aromatics were scarce, and only to be found in *Arabia*. *Pliny* was the first who discovered that these fables were only invented in order to sell their drugs dearer; but, on rejecting these, he substituted others nothing inferior, in declaring the cinnamon to be brought from *Ethiopia*, in mentioning the manner of its growth, that of gathering, and transporting it abroad, or to strangers; the difficulties he has stamped upon all these circumstances, and on the means of having it in time, as also the *cassia*, do not appear less great, nor less fabulous, than those of *Herodotus*, which he would not admit. See *Pliny*, *lib.* XII. *Ch.* 19.

It is certain that neither *Ethiopia*, nor *Arabia*, has ever produced any of these aromatic barks; the trees from whence they are taken can never be transported, on account of the different nature of the soils, and the drought and heat which reigns there: and it is only in the *isle of Ceylon* the air and earth are really fit to nourish them, so that it is this place alone, which has in all times supplied the rest of the world with these aromatics.

In fine, the ancient *Arabians* did not invent fewer fables in favour of their *commerce*, than the *Persians* did to represent the dangers which they had in procuring the gold in those parts of *India* where they could find it, and which were believed sandy. This is what may likewise be seen in the book of *Herodotus* above cited.

Pliny says nothing of the navigation of the *Arabians*, which is a proof that it was unknown in his time. He only mentions that of the fleet of *Alexander*, which past from *India* to *Euphrates*, and that which the *Romans* made every year also in his time to the *Indies*: He has described the route from *Egypt*, but he has made it appear, that their voyages only terminated about the river *Indus*. The *Romans*, although masters of some ports of *Arabia*, did not, in the least, discover the navigation, which the *Arabians* took care to hide, and which they made directly from some of their ports to the *island of Ceylon*, to load with cassia, cinnamon, and precious stones; and from other parts of *India*, to do the same with other merchandizes, as gold, drugs, and odoriferous woods. It seems by the recital of *Pliny*, that the navigation which the *Romans* made to that corner of the *Indies* of which he speaks, did no injury to the *Arabians*, only in the smaller part of their *commerce*.

It is easy to comprehend that these last, in proportion to their navigating their seas, should have the good luck to discover the shortest passages to many parts of the first peninsula of the *Ganges*, and from that to the others; for we must not believe that the *Romans* were the first that crossed the *Arabian* sea, which it bounds, as *Pliny* remarks, *lib.* VI. *ch.* 23.

It was infinitely easier to the *Arabians* to cross this sea to *India*, or to *Ceylon*, than it was for the *Tyrians* to run over the different parts of the *Mediterranean*. The first had fine weather to chuse at their pleasure, and winds that were fixed and regular, by which they

they might ſecurely perform their voyages with as much exactneſs, rectitude and ſpeed, as they had occaſion for, and always, in a manner, equal in the ſame ſeaſons; advantages which the *Tyrians* had but very rarely; they never had fine weather at a certain point, on which they might depend, ſo that theſe had more need of ability in the Marine than the former, on account of the variableneſs of the winds, cloudy weather, and tempeſts, which often reign in the *Mediterranean.*

The winds of the *Indian ſea*, rarely tempeſtuous, are always regular, changing twice a year, and under two directions, alternately oppoſite one to the other; each laſts ſix months, at leaſt, if the latitude is near our tropick. Theſe winds are the ſouth weſt and north eaſt; and they are called Monſoons, of the which one is dry, and the other rainy; the north eaſt wind cauſes the dry Monſoon, and begins in the month of *November*, on this ſide the equinoctial line: The rainy one begins in the month of *May*, and it is occaſioned by the ſouth weſt, which makes it laſt till *October*.

In fine, the Monſoons, which reign at ſea on this ſide the Equinoctial, are always oppoſite to thoſe which reign on the other ſide of that line.

It is therefore ſeen by the exactneſs of theſe two ſeaſons, and the regular winds of the *Indies*, that it was not any thing difficult to the *Arabians* happily to ſucceed in their navigation for paſſing the ſea, not only to the *Iſle of Ceylon*, but alſo to that of *Sumatra*, or to *Malacca*, which is in its neighbourhood. They yet make to this very day theſe traverſes, in a great meaſure, without uſing the compaſs, at leaſt very rarely; for the winds, being once fixed and invariable, ſerve them for guides and rules in the direction of their route, almoſt as well, and even in ſome manner more exact, than they would do by the help of the ſtars in ſerene weather. What is it then that ſhould have hindered the performing the ſame in ancient times? This is what the modern hiſtorians have not thought of, in ſpeaking of the ancient navigation of *India*. It is probable, had they been on the ſpot, as I have been, they would have thought as I do.

Many nations among the *Indians* have always croſſed theſe ſeas by the favour of theſe winds. The dry Monſoons, periodically renewed by the north eaſt wind, aſſiſt their ſailing to the weſtward; and the wet Monſoons, formed in like manner by the oppoſite winds of ſouth weſt, ſerve them alſo for ſailing eaſtward. One Monſoon ſerving them to go, and the other to return, and thoſe always equally certain and regular.

The *Arabians*, waſhed by the ſame ſea, ought therefore to do the ſame thing; and it is what they have always done, according to the tradition of the *Indian Nations*, who regarded them as the maſters of the navigation of the ſeas, till the arrival of the *Portugueſe* among them, who ruined entirely the vaſt *commerce of Arabia*, which had been of ſo long a duration.

Pliny makes mention of theſe two winds for traverſing the *Arabian ſea*. The ſouth weſt, which was called, ſays he, in that country, *Hypalus*, was the proper wind for ſailing from the cape of *Syagros*, which is believed to be that of *Fartaque*, to *Zizerus*, a port in *India*; this is apparently that of the preſent *Diu*: They, in returning, adds he, departed from thence in the month of *December*, or even in that of *January*, and this traverſe was made, according to him, in forty days. The *Periplus* of the *Red Sea*, attributed to *Arianus*, ſays the ſame, according to Mr. *Huet*; it informs us farther, that they ſailed from *Arabia* for *India* in the month of *July*, and theſe ſeaſons are exactly the ſame now, with reſpect to the navigation of thoſe countries.

Mr. *Huett* believed, by the relation of *Pliny*, that theſe courſes were new, and had been diſcovered by the *Romans*, which might be ſo in regard to the *Romans* only, but it is abſolutely not the ſame in reſpect to the *Arabians*, as theſe routes were at that time known to the latter, and had been ſo for ſeveral ages. The author of the *Periplus*, before-mentioned, ſays, that it was an ancient pilot named *Hypalus*, who firſt diſcovered, by favour of a ſouth weſt wind, this courſe to the *Indies*, and that his example was followed with ſo much ſucceſs, that they gave to this wind, the ſaid pilot's name*. However, we ought to be perſuaded, that this only regards the navigation of the *Romans*.

In fine, after theſe eclairciſſements, we ought not any longer to be ſurprized at the ancient ſplendor of the *Arabians*, which, at the ſame time, occaſioned that of the *Tyrians* and *Egyptians*; the commodious ſituation of their country, the pleaſantneſs of a frequent

* *Traité du Commerce et de la Navigation, par M.* Huet, *Chap.* 54.

requent or almoſt continual ſerenity of their ſky, the direct regularity of the winds which reigned in their *Oriental ſeas*, and their own ſpices, above all, the incenſe, were advantages which would naturally render them flouriſhing, if improved, as they always were by them; and it may be added, that the goodneſs of their ports, infinitely better than all thoſe of *India*, was what favoured them moſt in their *commerce*. I am ſtrongly led to believe, with Mr. *Huet*, that the ſurname of *Happy*, which *Arabia* anciently received, only came from the excellency of her harbours, and from that of her former *commerce*. This *Arabia*, called Happy, was never ſo rich in its own product as to merit ſo fine an appellation; it might rather have been given her for being the richeſt nation in the world by her traffick with ſtrangers, than becauſe her ſoil was found better comparatively than that of *Stoney* or *Deſert Arabia*.

The laſt remark to be made is, that the treaſures and *commerce* of the *Arabians* enriched the neighbouring nations; *Judea*, above all, felt it moſt, as may be judged by the revenues and wealth of *Solomon*, which the ſcripture deſcribes in the tenth chapter of the firſt book of *Kings*, and the ninth and ſecond of *Chronicles*, to have been ſo immenſe "that all the kings and governors of *Arabia* brought him gold and ſilver, beſides his annual revenue, amounting to ſix hundred and ſixty-ſix talents of gold;" and it is likewiſe from thence known, what were the preſents which the queen of *Sheba* made him, after coming from the depth of *Arabia* to ſee him and prove his wiſdom, importing only in gold one hundred and twenty talents, beſides ſpices and precious ſtones, making, according to father *Calmet*, 8,176,000 *French* livres, or, at the exchange of 54*d. per French* crown, of three livres, as it was then governed, about 613,200l. ſterling: though dean *Prideaux* computes it at 864,000l; a plain proof of the great richneſs of this queen's country; and, to confirm the many advantages that *Judea* reaped from *trade*, I think Dr. *Garcin* might have added to what he has ſaid on this ſubject, the mention that is made in the twenty-ſecond chapter of the firſt book of *Chronicles*, of the wealth king *David* had prepared for the houſe of the Lord: *viz. an hundred thouſand talents of gold, and a thouſand times, one thouſand talents of ſilver*, making the immenſe ſum of 170,000,000l. ſterling, according to the aforeſaid dean's calculation of 7,200l. *per* talent of gold, and 450l. *per* talent of ſilver, only in thoſe two metals, beſides, braſs and iron without weight, and the addition that he made out of his privy purſe, towards that pious work, of three thouſand talents of gold, and ſeven thouſand talents of refined ſilver, as hinted in the twenty-ninth chapter of the above-mentioned book, and the fourth verſe; to which we may ſubjoin what is recorded in the ſeventh verſe, *that the fathers and princes of the tribes of* Iſrael, &c. *gave five thouſand talents, and ten thouſand drams of gold, ten thouſand talents of ſilver, eighteen thouſand talents of braſs, and an hundred thouſand talents of iron*, as an additional proof of the benefits brought to this country by *commerce*; for none of this vaſt treaſure was the product of it, and conſequently muſt have been imported, to the great enriching both of prince and people; as plainly appears from the magnificence of their gifts. And though we have not the account of king *David's* trade to the land of *Ophir* and *Tarſhiſh*, as fully noticed as we have that of his ſon *Solomon's*, yet he undoubtedly commenced it, on his conqueſt of the kingdom of *Edom*, which made him maſter of *Elath* and *Exiongeber*, two ſea-port towns on the *Red-Sea*; from whence he might, and certainly did, direct his *traffick* to the coaſt of *Africa* weſtward, and to *Arabia*, *Perſia*, and *India*, on the eaſt; and, as he lived twenty-five years after making that conqueſt, we may account for his amaſſing ſuch, otherwiſe, an incredible ſum, by the long continuance and vaſt profit of his trade.

I am not ignorant, that many learned authors judge the talents above-mentioned to have been leſs than they are here calculated at; yet, ſuppoſing with them, that they were not above half the value, the ſum ſtill remains prodigiouſly great, and ſhews, what I am contending for, that *commerce* alone could furniſh ſuch a treaſure.

[NAVIGATION OF SOLOMON'S FLEET.] From the commerce and navigation of the *Arabians*, we may paſs, with great propriety, to that of the fleet of *Solomon*, which went to *Ophir*. After what we have ſeen of the *Navigation* of the former, it will not be very difficult to make appear more clearly than has ever yet been done, which way it took for performing this voyage.

Firſt, there is a great probability, that *Solomon* was informed by ſome *Arabians*, or by the queen of *Sheba* herſelf, long before ſhe came to ſee him, of the maritime places, from whence they drew their gold, their ſpices, and the other rich merchandizes of

their *commerce*, as well as of the route which they had to go; and that it was in conſequence of this diſcovery, that he took the reſolution to maintain, in ſome port of the *Red Sea*, a fleet to proceed every three years, according to the ſacred text, to the ſame places which were frequented by that of the *Arabians*; this could not be otherwiſe for many reaſons, which may be deduced from all that I have advanced, and from that which I ſhall yet add here.

Secondly, it cannot be doubted that *Solomon*, after this diſcovery, and with the deſign of drawing from *India*, the ſame treaſure which the ports of *Arabia* procured, did not take care to ſecure pilots to conduct his ſhips to thoſe places; and as his fleet wanted men to fit it out, and ſerve aboard it, this prince, for that reaſon, obtained, as the ſcripture informs us, from *Hiram* king of *Tyre*, ſome people experienced in maritime affairs, who, as it likewiſe appears, had alſo ſhips in the *Red Sea*, to join with thoſe of *Solomon* in this voyage.

It is evident by what I have ſaid, in regard to the *Arabians*, that the Iſlands of *Ceylon* and *Sumatra* were the principal places, to which they ſailed; the fleet of *Solomon* ought certainly to do the ſame in holding the ſame route; I would ſay, in traverſing the midſt of the ſea.

It cannot poſitively be affirmed, that the Iſle of *Ceylon* has been formerly rich in gold, as many of the learned believed, and that this fleet which certainly went thither, drew its gold from thence, as it did its precious ſtones, Caſſia, and Cinnamon; but it may be ſuppoſed, with much greater probability, that it got it from ſome part of the Peninſula of *Malacca*, called anciently the *Cherſoneſe of gold*, or from the Iſland of *Sumatra*, ſince this has been always, as it ſtill is, full of this precious metal. The ſea is as eaſy, or eaſier, to paſs from the Iſle of *Ceylon* to that of *Sumatra* by the weſtern monſoon, than it is from *Arabia* to the coaſt of *Malabar*, or to the Iſland of *Ceylon*, as I have demonſtrated. Theſe two traverſes have been always practiſed with the greateſt facility. That which the learned ſuppoſe, along the eaſtern coaſt of *Africa* to *Soffala*, is ten times more difficult and dangerous, without reckoning that this laſt place is two hundred leagues more diſtant from *Arabia* than the Iſle of *Sumatra* is, and that the winds, which are not the ſame nigh, this coaſt, as in the middle of the ſea, are irregular, and very often contrary. In a proper ſeaſon, a paſſage is now made from *Arabia* to *Sumatra* in leſs than a month, which cannot be done in four, from the ſame place to *Soffala*, by coaſting *Africa*, in any time that may be choſen.

It is then clear that this is that direct route from *Arabia* to *Ceylon* and *Sumatra* which the *Arabians* took; and which the fleet of *Solomon* always choſe as the eaſieſt and moſt profitable, or as the only one that could procure him the moſt precious merchandizes of all the eaſt as well as all ſorts of ſpices.

Aloe, which is a moſt odoriferous wood, and which is ſpoken of in ſcripture, is only found in theſe countries, and of which it having been always a principal *commerce*, is a ſtrong proof, that the fleet of the *Arabians*, and that of *Solomon*, went to thoſe places. Let us yet add, that the woods of *Almugghim* came from thence, and it may reaſonably be ſuppoſed the *Sandal*, being alſo a ſweet ſmelling wood; it comes from the iſland of *Timor*, and the *Macaſſers* have always carried it to *Malacca* and *Achin*, in the Iſle of *Sumatra*, for ſale to the other nations of *India*, who have ever diligently ſought it.

Theſe elucidations, which ſtrongly agree in favour of the truth of thoſe ancient voyages, ought to releaſe the curious from the perplexities and embarraſſments, into which the commentators on the Bible by the difference of their opinions on this matter, have thrown them. The ancient hiſtory of *commerce* receives alſo a clear light from this eaſy demonſtration, where the navigation of the *Indies* has always been, and the tranſport of the rich merchandizes that have at all times come from thence.

Beſides, it is ſeen by theſe very eclairciſſements, that it is by no means neceſſary to make the fleets of *Solomon* and *Hiram* undertake the painful tour of *Africa*, to fetch every time the gold and merchandize as far as *Spain*, as Mr. *Huet* has pretended, and yet more recently the author of the *Spectacle de la Nature*. Theſe gentlemen, on the credit of ſome ancient hiſtorians, who relate an example of a voyage that was made round *Africa*, have thought they might conclude, that the fleets of the *Hebrews* and *Tyrians*, which ſailed from the *Red Sea*, made this route in the ſame manner, and, what is more, that they repeated it, according to them, every three years.

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This is not a proper place to enlarge on explaining the difficulties the fleets muſt encounter, to make this prodigious tour along ſhore, as theſe authors have advanced; it is eaſier to imagine it in a cloſet than to make it on the ſpot, and to go to examine or prove the dangers; if they had drawn for themſelves an exact picture of the fatigues to be endured in riſking to follow the coaſts of this great part of the world, and had painted the unknown ſhelves and banks under water, with which the coaſts are ſo well furniſhed; the contrary winds and currents which laſt long; and, what is worſe, the wrecks which tempeſts almoſt continually occaſion, on being too near a ſhore, they would, without doubt, have changed their language. Even now, when navigation is more perfect than ever, how many wrecks happen in tempeſtuous ſeaſons, when ſhips are in ſight of the coaſts either near their arrival, or after ſailing from ſome port? Theſe wrecks would be more frequent and numerous, if the ſeas and havens were ſtrange and unknown, and without the charts now uſed, of which they were formerly ignorant.

The coaſts of *Africa* are in many parts difficult to frequent; there are heights, lengths, and ſteepneſſes, full of ſhelves, and where the ſea is dreadful in the motion and noiſe of its waves, which break againſt an infinitude of rocks. How many ſhips have the *Portugueſe*, *Engliſh* and *Dutch* loſt, and ſtill loſe, near the *Cape of Good Hope*, notwithſtanding the great experience they have had in navigation on that coaſt! their loſſes have been ſtill greater on many occaſions in the very road of that cape.

Africa has in truth always produced gold and ivory, but it is a miſtake to think that it has alſo yielded ſpices and precious ſtones; if hiſtorians of former times, and, among others, *Pliny* have affirmed it, they ought to be regarded as having fallen into an error in that reſpect, the ſame as has often happened to them in many other things.

On the contrary, the *Indies* have always abundantly afforded theſe rich productions, with many others, of which uſe has been made in trade. Preſent experience ſuffices to demonſtrate theſe two truths; and theſe are facts which prove in their turn, that it was not to *Africa*, and yet leſs to *Spain*, that *Solomon* ſent his fleet to load thoſe precious commodities, ſo diligently ſought after in antiquity. If any ſuch fleet had riſked making the tour of *Africa* to come to *Spain*, what appearance or probability was there that it returned by the ſame way, and under the ſame riſques, rather than through the *Mediterranean*, to get to ſome port in *Syria*, which is much nearer, and the ſea better known and leſs dangerous?

Ophir and *Tarſhiſh*, where the ſaid fleets went, according to ſcripture, are not then the ſame places that Meſſ. *Huet* and *Pluche* have endeavoured to eſtabliſh in *Africa* and *Spain*, viz. *Ophir* at *Soffala*, and *Tarſhiſh* in *Andaluſia*. The learned *Bochart* has likewiſe found theſe places in the *Indies*, notwithſtanding the oppoſition which the Abbé *Pluche* made againſt him. I am ſtrongly led to believe, with *Antoine du Pinet*, the tranſlator of *Pliny*, that *Tarſhiſh* was *Guzurate*, named by *Pliny* himſelf *Gedroſi Populi*. That author always tranſlated this ancient name into that of *Tarſhiſh* and *Guzurate*.

The firſt voyages to the *Indies* were made from that ſide, and it is probable from this, that the *Hebrews* called the ſea which bordered on it, the ſea of *Tarſhiſh*, to diſtinguiſh it from the *Red Sea*, which was the neareſt to their country among thoſe to the eaſtward of them.

In fine, in reſpect of *Ophir*, it appears, that that place muſt be *Sumatra*, becauſe this iſle has always been the richeſt in gold; or elſe the *Peninſula of Malacca*, believed to be the *Golden Cherſoneſe* of the ancient, and where were found the odoriferous woods, and other aromatics, which the more remote nations have always brought *there*, and even to *Achin*, the capital of *Sumatra*.

To finiſh this ſubject, I ſhall remark, that the author of the *Spectacle de la Nature* has attempted to demonſtrate, "that the knowledge of the North Star rendered navigation anciently more bold and fortunate; that the *Phœnicians* were thoſe that applied themſelves to it moſt; that they taught it with ſucceſs to the *Hebrews*, and that they ſerved for guides to the fleets of *Solomon*; and that, in fine, by their indefatigable activity, and by their continual attention to the information of the Polar Star, they penetrated every where:" By which this learned man gives us to underſtand, that the *Phœnicians* made the *Hebrews* make the tour of *Africa* by the aſſiſtance of that Star; but

but how could it *ſerve* for this long voyage, when it is hardly ſeen only at five degrees of northern latitude, that is to ſay, one hundred leagues on this ſide the line?

This author, to ſhew that the *Phœnicians* with the *Hebrews* might make this tour coaſtways, relates an example taken from *Herodotus*, *viz.* that *Necao*, king of *Egypt*, ſent ſome pilots on the *Red Sea*, and ordered them to make the tour of *Africa*, which they did, and, returning by the ſtraits of *Gibraltar*, they arrived in *Egypt* the third year: But when will another fleet, ſuppoſing this ſtory true, be able to do the ſame? And, ſeeing that theſe pilots were near three years in making this tour, the fleet of *Solomon* would not have failed being almoſt ſix, in making the ſame voyage twice, going and coming, without counting its ſtay in *Spain*; beſides, a fleet never ſails, by a third, ſo quick, as a ſhip or two, can ſeparately.

As theſe pilots with their people did not encumber themſelves, it is ſaid, with many proviſions to make this prodigious tour, he takes care to relate the paſſage of *Herodotus*, which ſays, *that theſe people advanced into the Southern Sea*, and that as they were not ignorant, that the ſummer rains deſtroyed, in the moſt remote part of *Africa*, that which was ſown in the ſpring, *when they found themſelves in autumn, they landed, ſowed, and waited the crop, without ever leaving the coaſts of* Lybia, that is to ſay, of *Africa*, *getting in their harveſt, and reimbarking*.

This ſavours ſtrongly of a fable, to any one acquainted with the country and ſoil of *Africa*; beſides, *Herodotus* ſuppoſes a thing of which he was ignorant, *viz.* that our autumn makes the ſpring in the meridional parts of *Africa*, their ſeaſons being oppoſite to ours. There might be many things offered to demonſtrate the impoſſibility of this practice among travellers of this order.

When a writer is ignorant of geographical particulars, and the nature of a remote country, he cannot avoid, at leaſt, falling into falſe ſuppoſitions, when he ſpeaks minutely of them. This is what perſons who know theſe places, by having been there, generally remark very well and juſtly.

THE MERCHANT'S DIRECTORY.

Of Merchants, whether Natives or Foreigners; their Character; ſome Directions for their prudent Conduct; and an Abſtract of the Laws now in Force concerning them.

THE antiquity of the free profeſſion of a MERCHANT may juſtly entitle it to claim precedency to nobility of birth, and all hereditary, or new created dignities conferred on men by emperors or kings; for there were eminent merchants in the world long before there were any nobles, or titled gentry. But, in the early ages of commerce, the rank and profeſſion of a merchant was neither ſo well underſtood, nor ſo clearly diſtinguiſhed from that of ſimple inland traders or ſhopkeepers, as it has been in modern times.

A confuſion of the terms merchant and trader, derived from the latin word *Mercator* and *Tradendo*, prevailed for a long time, and was adopted by commercial writers. The literal tranſlators from *Cicero* give no other definition of his ſenſe of the word *Mercator*, than that he is a perſon who buyeth and tradeth in any thing. And in the early annals of *England* and *Scotland* we find traders, who reſorted to the publick fairs, indiſcriminately ſtiled *Mercatores*; they are thus denominated in the publick records in the reign of *Edward* I. But, after the firm and extenſive eſtabliſhment of commerce in this country, protected by a maritime force, and improved by the ſettlement of colonies, a juſt diſtinction took place between the merchant, and the inland trader, whether in the groſs or by retail. *Mun*, an eminent modern commercial writer, very happily calls a merchant, the ſteward of the kingdom's ſtock, by way of commerce with other nations. "*None therefore, in Great Britain, can properly be ſtiled merchants, but ſuch as export the native products and manufactures, or thoſe of her colonies, to foreign climes; or import the commodities of different countries into theſe kingdoms.*" To this proper acceptation of the word merchant it will be neceſſary ſtrictly to adhere, that we may not confound the rank and character of the *Britiſh* merchant, with that of the wholeſale dealer or trader, an error which we may be eaſily led into, if we conſult the common directories and other printed liſts of our citizens, ſome of whom, prompted by vanity, give a ſmall annual gratification to the printers, to be placed in the firſt claſs of citizens, when their ſituation only entitles them to the ſecond. This diſtinction deſerves particular notice in this place, becauſe the education required to accompliſh the character of a Britiſh merchant, is by no means neceſſary for the ſecond claſs of citizens, wholeſale traders.

The mercantile profeſſion ſtands in a high degree of eſtimation with all the nations of *Europe*, except *Spain*. In *France*, by two Arrets of *Lewis* XIV. the one in 1669, and the

the other in 1701, a nobleman is allowed to trade both by land and ſea, without any diſparagement to his nobility; and we have frequent inſtances of merchants being ennobled in that country, from reſpect to the utility which their commerce, and the manufactures they have ſet up, has produced to the ſtate. In *Bretagne*, even a retail-trader does not derogate from his nobility, which only ſleeps whilſt he continues to exerciſe it, or, in other words, he only ceaſes to enjoy the privileges of his nobleſſe, whilſt he carries it on, and re-aſſumes it by leaving off trade, without any letter or inſtrument of rehabilitation. In many other ſtates, and more eſpecially in the Republics of *Venice*, *Holland*, and *Genoa*, its value increaſes, and I wiſh I could ſay the ſame regard was paid to it in *England*; but its importance is not ſo juſtly conſidered by us as it ought to be, more eſpecially, as we enjoy every deſirable advantage for carrying it on; and, could the gentlemen engaged in it be brought to this way of thinking, and be perſuaded to do juſtice to a profeſſion we all eſteem honourable, by a ſtricter imitation of the above-mentioned ſtates, and, not only ſtudy, but adopt their aſſiduity and diligence, more eſpecially that practiſed by our induſtrious *Flemiſh* neighbours, from a ſincere conviction of the excellency of the mercantile employ; we ſhould ſoon outſtrip every competitor, and render the *Britiſh merchant* as celebrated as the *Britiſh valour*, or the *Britiſh power*, which he, more than others, contributes to ſupport. It is true, commerce ſtands ſo fair in the eſteem of an *Engliſhman*, and promiſes ſo many occaſions either for raiſing or improving a fortune, that many younger ſons and brothers of peers are frequently bred up to, and embrace it; but then, they are too apt to quit it on ſucceeding to the dignities of their families, or to ſome publick employment, and withdraw thoſe funds, which might otherwiſe be continued in it, both to their own and the nation's emolument; whereas, was a contrary practice obſerved, and could many, whoſe immenſe riches enable them, be perſuaded to purſue their firſt beginnings, and deſtine part of their great effects to run into this channel, we ſhould ſee commerce yet daily improve, and many more active profeſſors ſhining at the head of it than we now do; a number of important enterprizes might be undertaken, and happily concluded, to the no ſmall increaſe both of publick and private intereſt: But it is a misfortune that many gentlemen who have been enriched by it, or their inheritors, frequently withdraw from it, to live in retirement, or by an advancement to honours and poſts, change the profitable and pleaſureable mercantile life for the more troubleſome, though ſplendid one, of grandeur and power; and notwithſtanding ſuch may, and undoubtedly often do, look down on their quondam buſineſs as derogatory and now beneath them, yet a prime miniſter of *France*, and ſeveral ſucceſſive grand dukes of *Tuſcany*, as mentioned in the preceding diſcourſe, I ſhould think might countenance any one's continuance in it, as they deemed it no diſparagement to their high ſtations. And, to ſhew how commerce is thought of by moſt foreigners, we may ſubjoin to the examples already quoted of the regard paid to it, that many of the *Italian* princes are the principal merchants of their ſtates, and think it no diſcredit to make their palaces ſerve as warehouſes. Many of the kings of *Aſia*, moſt of thoſe on the coaſt of *Africa* and *Guinea*, traffick with the *Europeans*, either in perſon or by their miniſters; ſo that, in reality, *Spain* is the only country I know of, where the mercantile profeſſion is in diſrepute; and there it is counted leſs ignoble and ungenerous to beg, than to make, or improve a fortune, by merchandizing. And, before I proceed to mention the laws in force concerning *trade* and *commerce*, I ſhall here deſcribe the neceſſary qualifications of merchants, and give ſome few rules for their conduct, tending to ſecure to them the ſucceſs they aim at.

Previous to a man's becoming an univerſal dealer, he ought to treaſure up ſuch a fund of uſeful knowledge, as may enable him to carry it on with eaſe to himſelf, and without riſking ſuch loſſes and diſgraces, as great ill-concerted undertakings will naturally expoſe him to; wherefore, to reduce this neceſſary ſcience to a proper regulation, I ſhall recommend the following particulars to his acquirement, and, if his concerns are more limited, his learning and knowledge may be ſo too.

The firſt care of parents or guardians who deſign to bring up a youth to be a Britiſh merchant ſhould be, to inſtil into his tender mind the ſoundeſt principles of religion and morality, and a ſacred veneration for truth; probity ſhould be the baſis of all his juvenile actions; nor ſhould he, even in his ſports and paſtimes, ever be ſuffered to forfeit his word, or evade his promiſe.

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The early cultivation of his native tongue is indiſpenſably neceſſary and to be preferred to the ſtudy of the dead languages. Parents cannot be guilty of a greater folly than to make lads labour hard at Latin and Greek ſeven or eight years, when perhaps they will not have occaſion twice in their lives, to ſpeak, read, or write, either of theſe languages.

The general Merchant then, ſhould learn;

1. To write properly and correctly his native language.
2. All the rules of arithmetick, which have any affinity or relation to commerce.
3. To keep books of double and ſingle entry, as journals, ledger, &c.
4. To be expert in the order and forms of invoices, accounts of ſales, policies of inſurance, charter-parties, bills of lading, and bills of exchange.
5. To know the agreement between the monies, weights, and meaſures of all nations.
6. If he deals in ſilk, woollen, linen, or hair manufactories, he ought to know the places where the different ſorts of merchandizes are manufactured, in what manner they are made, what are the materials of which they are compoſed, and from whence they come, the preparations of theſe materials before working up, and the merchandize after their fabrication.
7. The lengths and breadths which ſilk, woollen, or hair ſtuffs, linens, cottons, fuſtians, &c. ought to have, according to the diverſe ſtatutes and regulations of the places where they are manufactured, with their different prices according to their times and ſeaſons, and, if he can add to this knowledge, the different dyes and ingredients which enter into the formation of the various colours, it will not be uſeleſs.
8. If he confines his traffick to oils, wines, &c. he ought to inform himſelf particularly of the appearances of the ſucceeding crops, for his government in diſpoſing of what he has on hand, or to learn, as exactly as he can, what they have produced when got in for his direction in making the neceſſary purchaſes and engagements.
9. What are the ſorts of merchandize which are found more in one country than another, thoſe which are ſcarce, their different ſpecies and qualities, and the propereſt method for bringing them to a good market, either by land or ſea.
10. Which are the merchandize permitted or prohibited, as well entering as going out of the kingdoms or eſtates where they are made.
11. The price of exchange, according to the courſe of different places, and what is the cauſe of its riſe and fall.
12. The cuſtoms due on importation or exportation of merchandize, according to the uſages, tarifs, and regulations, of the places, that he trades to.
13. The beſt manner of folding up, embaling, or tonning the merchandize for their preſervation, and to be the leaſt chargeable.
14. The price and condition of freighting, and inſuring ſhips and merchandize.
15. The goodneſs and value of all neceſſaries for the conſtruction and repairs of ſhipping, the different manners of their building, what the wood, the iron, the maſts, the cordage, the anchors, cannons, ſails, and all requiſites may coſt.
16. The wages commonly given to captains, officers, and ſailors, and the manner of engaging with them.
17. The modern foreign languages, or at leaſt as many of them as he can attain to, which may be reduced to five principal ones, viz. The *Spaniſh* and *Portugueſe* which are uſe in almoſt all the eaſt, particularly on the coaſts of *Africa*, from the *Canaries* to the *Cape of Good Hope*. The *Italian*, underſtood on all the coaſts of the *Mediterranean*, and in many parts of the *Levant*. The *Teutonick* or *German*, which is underſtood in almoſt all the northern countries. And the *French*, which is now become almoſt univerſally current, faſhionable, and uſeful.
18. The conſular juriſdiction with the laws, cuſtoms, and uſages, of the different countries he does or may trade to; and generally, all the ordinances and regulations which have any relation to commerce, either at home or abroad,
19. In fine, although it is not preciſely neceſſary that a merchant be very learned, it is notwithſtanding, very proper that he ſhould known ſomething of hiſtory, particularly that of his own country; of geography, hydrography, or the ſcience of navigation; and that he has a knowledge of the diſcoveries of the countries where trade is eſtab-

eſtabliſhed, in what manner it is ſettled, of the companies which are formed to ſupport thoſe eſtabliſhments, of the colonies that they have ſent out, of which he need not want memoirs, as almoſt all are inſerted in this work, and which he may alſo learn from the relations of travellers; all theſe things are of a very great utility for the enterprizes of commerce, which he may have a deſign to undertake.

20. If the circumſtances of ſituation and fortune will allow of it, after he has finiſhed his domeſtic education, and has been introduced into the accounting-houſe, to be ſhewn the general method of correſpondence with foreign merchants, we will ſuppoſe about his eighteenth year, he ſhould be ſent for two or three years on his travels to commercial nations; recommending him, at each place where he is to reſide, to ſome conſiderable merchant, who ſhould be adviſed to receive him without form or ceremony, upon the footing of one of his family: and, ſo far as is conſiſtent with the neceſſary ſecrecy of commercial tranſactions, to let him aſſiſt in his accounting-houſe, at the cuſtom houſes, and on the quays.

We may add to the foregoing requiſites for forming a merchant, that he ought on all occaſions to avoid fraud and deceit as corroding cankers to his reputation and fortune; for however cunningly the maſk is worn, chance may, or time certainly will, diſcover the cheat, and render the wearer expoſed to the contempt and inſults of thoſe he has impoſed on; and, to what has been ſaid, permit me to ſubjoin the advice, that he who undertakes to be a merchant ſhould do it with great caution, and circumſpection, obſerving ſeveral circumſtances tending to ſecure him ſucceſs: as firſt, to make himſelf maſter of that branch of commerce he intends to engage in; and if he does not tranſact his buſineſs perſonally, to be cautious in his choice of factors; above all, that they be noted for their capacity and integrity, otherwiſe the beſt laid ſcheme may be rendered abortive, and produce a conſiderable loſs, inſtead of an expected advantage, through the treachery, neglect, or ignorance of the agent; for which reaſon a merchant ſhould not be drawn in to employ a factor, with whoſe character he is unacquainted, from any motive whatſoever, even from that moſt prevailing one, of ſerving for a leſs commiſſion than what others commonly do, as I am ſure no concern is worth carrying on, that will not afford the allowance generally made to thoſe the merchant thinks proper to ſubſtitute and employ. His firſt care, therefore, ſhould be the choice of ſuch a correſpondent as he can depend on, whoſe integrity will naturally lead him aſſiduouſly to ſolicit and promote the intereſt of his principal, unbiaſſed by any ſiniſter views of his own. But as merchants, as well as inland traders tranſact a great part of their buſineſs themſelves, I ſhall here add ſome valuable remarks for their government in purchaſes and ſales, partly extracted from Monſ. *Savary's Parfait Negociant*, and partly what my own experience has furniſhed me with, as they may be equally ſerviceable to an *Engliſh* and *French* reader; though Mr. *Savary's* ſhare of them was principally intended for the latter.

Trade becomes more or leſs perplexing, according as it is more or leſs extenſive; and it is for this reaſon that merchants ought to appropriate different maxims and conſiderations for the conduct and management of their affairs.

Thoſe who traffick in the merchandize of our own manufactories, or confine their trade to the conſumption of one city only, run leſs riſks, and carry on their buſineſs eaſier than thoſe who diſpoſe of their goods, not only in the place of their reſidence, but to dealers or retailers in other parts of the kingdom, or abroad; this ſhall be explained, after treating of the manner which merchants ought to obſerve in the purchaſe of commodities, and the eſtabliſhing fabricks themſelves.

And for this it is to be remarked, that in places where any conſiderable manufactories are ſettled, there are generally aſſociated merchants, who ſupply the fabricators with the neceſſary materials for their works, which they ſell them, and in payment take their goods, which they afterwards diſpoſe of in other places, or on the ſpot, to ſupply commiſſions given them.

Though there are ſome of the artificers ſo opulent, as to buy and procure the materials they want for the ſupply of their manufactories from the firſt hands; yet there are others, who being maſters of leſs ſtock, ſell their goods to the firſt purchaſers that demand them.

Now merchants muſt govern themſelves in their dealings with theſe three ſorts of men according as the times and ſeaſons ſhall dictate; for in thoſe when the merchandize are

ſcarce

rce and in demand, they muſt buy of all as well as they can, and according to the vantages that may preſent; but, when commerce is dead, or little ſtirring, and abunnce of goods lying on hand, they ſhould then act with circumſpection, and obſerve following maxims in all their purchaſes.

1. When goods begin to riſe in price, which commonly proceeds from theſe two ſes, either that the value of materials is exceedingly augmented on account of their rcity, or that there are but few goods ready-made, to ſupply a briſk demand, it is ural for thoſe that are perfected to increaſe in value, in proportion to the want and city of them; but it is prudence in him who would buy under ſuch circumſtances, examine the cauſes that produce this augmentation; and, if the goods are ſilk, enire whether the crop of that commodity has been good or bad, though, if the ſeaſon been moiſt and rainy at the place of its growth, he may be aſſured of the latter, that the ſcarcity of the merchandize proceeds from this of the principal mate-

is equally the ſame in the manufactories of cloth and other woollens, when wools ſcarce and riſen in price; and the ſame with linens under the ſhortneſs of the crop hemp and flax, and indeed of all ſorts of materials, which compoſe the manufacs of the different ſorts of merchandize, current in trade; becauſe the ſcarceneſs of e augments their price, and conſequently that of the commodities made of them.

There is no doubt, that when the augmented price of merchandize proceeds from the city of their materials, that it not only will remain ſo *long*, but that it will daily riſe little and little, and in this caſe afford the merchant no room for deliberation, who ght immediately to buy and make his bargain, to receive afterwards, in a certain e, the quantity he judges he may want to ſell.

f the riſe of goods proceeds from there being few in the fabricks, and a great demand them, and not through want of the materials which compoſe them, the buyer ought ct with ſagacity and prudence in their purchaſe; becauſe this probably is a fire that ſoon extinguiſh, and this augmentation laſt no longer than the warmth that occaed it, for two reaſons; the firſt, becauſe it may be, chance effected it, owing to ſel merchants of different places accidentally giving their commiſſions at the ſame e, or that they happen to meet at the manufactories, which makes the fabricators d firm to their prices; though, when theſe merchants are ſupplied, things return to ſame ſtate they were in before, and ſuch an occurrence makes them ſometimes even iniſh greatly in their value, becauſe the workmen, ſeeing themſelves ſought after, age deeply in their fabricks, and the abundance then occaſions a cheapneſs, in the e manner, as a ſcarcity before produced the reverſe; and theſe conſiderations are y important towards ſucceſsful purchaſes.

2. The ſecond maxim, neceſſary to be obſerved in the buying merchandize is to be emely circumſpect in his words, that the purchaſer's deſire of having the goods he eating for may not appear; and he ſhould not ſlight or under-value them, in order be thought not to want them, as this cunning only ſerves to embarraſs the mind of manufacturer, and make him more firm and tenacious under the uncertainty, whe- this is a feint or not, and is a means of his not ſo ſoon reſolving to part with his ds at the price offered for fear of being ſurprized: On the contrary, he ought to act h ſincerity and frankneſs, accompanied, however, with prudence; workmen liking er to deal with ſuch ſort of chapmen, than with thoſe who uſe tricks and ſubty.

3. The third is to conſider whether the merchandize has diminiſhed in price from a her degree to which it was before mounted, or whether it is augmented in price from wer one, at which it was, by reaſon of a dulneſs in trade, or by the too great abunce that there has been in the fabricks: This is the greateſt nicety on the part of the ers.

For if it is at the height of its dearneſs, and tends to a fall, then you ought not to , becauſe it is certain, that if the cauſe which made it mount to ſo high a price es, it will daily diminiſh, till it returns to the point of its juſt value.

On the contrary, if the goods are at their loweſt value, and the price begins to riſe, it hen a time to buy, becauſe it is certain that it will daily augment, ſo long as the ſe which gave room for its augmentation laſts.

And though what has been ſaid may appear a paradox, it is however a truth founded on experience, and by which the moſt ſkilful and ingenious merchants have greatly loſt or gained, according as they have timely taken their meaſures or neglected them.

4. The fourth maxim in the purchaſe of goods is, both to know and reflect where they will meet the beſt ſales, and then ſuit their quality to the taſte of the inhabitants.

5. The fifth maxim is to buy of the pooreſt workmen, becauſe they, not having means to lay up their manufactures, muſt ſell cheaper than the opulent, who have ſubſtance, and can keep their goods till a fit opportunity offers for a more advantageous ſale.

6. The ſixth maxim is, not to be drawn in to engage beyond your capital by the tempting bait of a cheap purchaſe, and from a wrong calculation of your ability to pay at the time agreed on; as a failure of punctuality herein will occaſion a loſs of credit among the fabricators, not to be recovered.

7. The ſeventh maxim is, not to employ, as factors at the fabrick, any who act as merchants, and ſell the materials to the manufacturers; for they always buy the goods dearer than others who have nothing to ſell, becauſe they give a part in payment, and very often to recover from their debtors they take of them merchandizes in payment, which are neither ſo good nor ſo faſhionable as thoſe bought with ready money.

8. The eighth and laſt maxim, which I ſhall mention on this ſubject, is, that if the buyer has a partner, one of them ſhould be on the ſpot, for two reaſons; *firſt*, becauſe, being intereſted in the purchaſe, he is more diligent, and takes better care of what he does, than a factor, who often regards nothing more than his own intereſt, and who, having commiſſions from ſeveral merchants, favours thoſe he pleaſes: The *ſecond* is, becauſe affairs are tranſacted more ſecretly, and, many times, opportunities offer for good purchaſes, which one commiſſioned doth not dare to engage in, though on ſuch adventures large profits are frequently to be made.

Theſe maxims alſo hold good in the purchaſe of all other commodities, and if carefully attended to, will lead the merchant in the ſteps he ought to tread, to ſecure ſucceſs; and as theſe have been advanced to guide him in laying out his money to the beſt advantage, I ſhall now borrow the aſſiſtance of the ſame author to furniſh him with proper directions for his management in conducting his ſales.

Firſt, The merchant ſhould avoid many words and circumlocutions in his dealings, as they will make him look more like a retailer than one who is not ſo; and, ſuppoſing he is treating with one of this laſt claſs, he may be aſſured, that the buyer underſtands the value of the goods, ſo that the merchant only occaſions himſelf an unneceſſary trouble to aſk much out of the way; therefore what is principally to be obſerved, in ſales on credit, is, that his debtor be one noted for his punctuality and honeſty, and alſo for diſpatching large quantities of goods, as theſe motives ſhould induce a preference to be given to one ſo qualified, though with leſs profit, rather than to another with an inferior credit and leſs trade.

2. If the merchandizes dealt in are ſuch as are dependent, in ſome ſort, for their value on the mode, ſeaſons ought to be conſulted for advantageous ſales, ſo that, if thoſe proper for the winter are aſked for at the latter end of it, it is not reaſonable to expect ſo much then as in the beginning, neither is it conſiſtent with the owner's intereſt to keep them, as he may have no other offers till the returning year, and he then riſks their continuing in faſhion, ſo that it will be prudent to embrace any tolerable offer, under theſe circumſtances, that is made him.

3. He ought not to truſt too much to any one perſon; for, in caſe of a failure, it may ſtraiten him, and, in the end, bring him to the ſame misfortune; therefore prudence will direct him to diſperſe his effects in many hands, that, if one or two miſcarry, he may be leſs ſenſible of his loſs, and better able to ſupport it: This is a very neceſſary maxim to be obſerved by thoſe who have large dealings, as the ſufferings by a contrary practice are innumerable, and there is no one article of miſconduct that has brought ſo many to ruin as this.

4. A merchant ſhould not inconſiderately engage with young men, who have little more to recommend them to credit than being the children of rich parents, as a truſt on this account is the product of a very falſe maxim; becauſe, if they do otherwiſe than well, their fathers would hardly pay their debts, as the creditor may have flattered himſelf,

lf, neither is it reaſonable to expect it, no more than to think they ſhould incommode emſelves, or hurt their other children, purely to ſupport a ſon, whom gaming, de- uchery, or at beſt imprudence, has reduced.

5. If it happens, that debtors omit paying what they owe at the time agreed on, the editors ſhould not oppreſs them with an extravagant intereſt; for, though neceſſity bliges them ſeemingly to ſubmit, it is a ſure canker to their fortunes, which too often laſt involves both the truſted, and him that truſts, in ruin. Beſides, if the latter cape a failure he has drawn the other into, I ſhould think he muſt ſuffer ſeverely om the ſtings of conſcience, when reflecting on his occaſioning the debtor's misfor- nes, by the extortion he had impoſed.

6. The ſixth maxim is never to lend to any ſort of perſons whatſoever on an unjuſti- ble ſecurity, nor to take an unwarrantable intereſt; for this is a deteſtable act, and oſes the uſurer to the penalty of the law, and renders him abominable both in the t of God and man.

t is, however, both reaſonable and prudent for a merchant to take pledges or ſecu- es from his debtors, and to be cautious of what they conſiſt; for, if they are in rchandize, the colours, faſhions, &c. of them may change, or the quality may ſuf- by keeping, ſo that whilſt he imagines he has the value of what is owing him in d, he may be miſtaken by the half: And in theſe caſes of lending or ſelling on ft, and taking pawns inſtead of notes for ſecurity, the ſeller or lender ſhould add to above precaution, *that* of making the terms of the depoſit very clear and apparent, caſe of a failure in the debtor, and a conſequential claim of the goods by the other ditors, as a joint property; otherwiſe he may be accuſed of endeavouring to conceal bankrupt's effects; and if he has not taken the prudent ſteps he ought in his deal- s, may be obliged to give up what he has received as a ſecurity, beſides ſuffering in reputation, for being unable to juſtify what he aſſerted and pretended; it would refore be very proper to have the affair tranſacted before witneſſes, or at leaſt to have the goods that are pledged particularly ſpecified in the note or obligation given for truſt or loan, by which means the aforementioned inconveniences would be avoid-

. A merchant ſhould always endeavour to diſpoſe of ſuch goods as are decaying, da- ged, or growing unfaſhionable, as ſoon as he conveniently can; and if money is obtainable for them, he ſhould barter them, if he can do it, on a tolerable footing; arding, however, in this caſe, not to make the exchange, as it were with his eyes t, but, *firſt*, be certain, that he is well verſed in the quality, and has a perfect know- ge of the goods he takes in return, otherwiſe he may verify the proverb of being *of the frying-pan into the fire*; for deceits are very common in theſe negociations. *ndly*, he ought to know where, and on what terms he can get rid of his new effects, rwiſe he may riſk loſing more by them, than by his old ones. And, *thirdly*, he ld always avoid giving any ſhare of ready money in the bargain, if he poſſibly as he that parts with it is ſure to have leſs advantage in theſe uncertain dealings, he that receives it.

. And *laſtly*, A merchant ſhould never ſell any of his goods in ſmall parcels, except en thereto by mere neceſſity, as this is derogating from his character, and will cer- ly occaſion him a loſs of his retail cuſtomers.

ſhall now lay before the reader, abſtracts from the ſtatute laws of *England*, relating merchants, independent of the *law-merchant*, or the laws of corporations and com- cial companies.

Merchants here, were always conſidered as ſubject to the juriſdiction of the com- law; though the municipal laws of *England*, or indeed of any one realm, are not cient for the ordering and determining the affairs of traffick and matters relating to merce; merchandizing being ſo univerſal, and extenſive, that it is impoſſible; efore, the *law-merchant* was eſtabliſhed, ſo called from its conſiſting of certain inva- e maxims, rules, and regulations, which have attained the general aſſent of the ctable merchants of every conſiderable commercial country for ages paſt, and to ch all nations pay a juſt regard. In all conteſts decided by arbitration, the *law-mer- t* is principally adhered to; and the common and ſtatute laws of this kingdom leave cauſes of merchants in many caſes to their own peculiar laws. In the reign of king *ard* IV. a *merchant ſtranger* made ſuit before the king's privy council, for ſeveral bale

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of ſilk feloniouſly taken from him, wherein it was moved, that this matter ſhould be determined at common law, but it was anſwered by the lord chancellor, that as this ſuit was brought by a *merchant*, he was not bound to ſue according to the law of the land. 13 *Edw.* IV.

In former times it was conceived that thoſe laws that were prohibitory againſt foreign goods did not bind a *merchant ſtranger*; but it has been a long time ſince ruled otherwiſe, for in the treaties that are now eſtabliſhed between nation and nation, the laws of either kingdom are excepted, ſo that as the *Engliſh* in *France*, or any other foreign country in amity, are ſubject to the laws of that country where they reſide, ſo muſt the people of *France*, or any other kingdom, be ſubject to the laws of *England*, when reſident here. 19 *Hen.* VII.

Engliſh merchants are not reſtrained to depart the kingdom without licence, as all other ſubjects formerly were; they may depart, and live out of the realm, and the king's obedience, and the ſame is no contempt, they being excepted out of the ſtatute 5 *Rich.* II. c. 2. and by the common law they might paſs the ſeas without licence though not to merchandize. *Mich.* 12 and 13 *Eliz.* *Dyer* 206.

By *Magna Charta* it is enacted, that all *merchant ſtrangers* in amity (not publickly prohibited) ſhall have ſafe conduct to come into, depart out of, and remain in *England*, and to travel by water or land, in and through the ſame to buy and ſell, &c. 9 *Hen.* III. c. 30.

And if any diſturbance or abuſe be offered them, or any other *merchant* in a corporation, and the head officer there do not provide a remedy, the franchiſe ſhall be ſeiſed, and the diſturber ſhall anſwer double damages, and ſuffer one year's impriſonment, &c. Stat. 9 *Edw.* III. c. 1.

All merchants (except enemies) may ſafely come into *England*, with their goods and merchandize. *Edw.* III. 14. Stat. 2. c. 2.

Merchant ſtrangers may come into this realm, and depart at their pleaſure, and they are to be friendly entertained: and *merchants alien* ſhall be uſed in this kingdom as denizens are in others by the ſtatute. 5 *Rich.* II. c. 1. 5 *Hen.* IV. c. 7.

No *merchant* ſhall be impleaded for another's debt, whereof he is not debtor, &c. and if a difference ariſes between the king and any foreign ſtate, alien merchants ſhall have forty days notice, or longer time, to ſell their effects and leave the kingdom. 27 *Edw.* III. c. 17.

Treaty of commerce with Spain *and other powers.*] *N. B.* The time for *merchants* to withdraw their effects has been by all late treaties enlarged to ſix months, during which term they are to remain free and unmoleſted as well in perſon as goods. But by the unſound policy of *Great-Britain* this regulation is rendered uſeleſs, for all foreign merchants, even the natives of the kingdoms with which we are at war, are ſuffered to remain with their effects, and to carry on their commerce in time of war as uſual, ſo long as they conform themſelves in every reſpect to the laws of the land, and behave as other good ſubjects of the king. The *French* and the *Spaniſh* government on the contrary have made it a rule, to baniſh *Britiſh* merchants and traders from their dominions according to the aforementioned regulation.

All *merchants* may buy merchandize of the ſtaple, and any *merchant* may deal in more merchandizes than one; he may buy, ſell, and tranſport all kinds of merchandize, except by later acts, wool, &c. 27 *Edw.* III. c. 3. and 38.

Merchant ſtrangers are to find ſurities, that they ſhall not carry out the merchandize which they bring into *England*. 18 *Edw.* II. c. 21.

And when they bring any merchandize into the realm, and ſell the ſame for money they are to beſtow it upon other merchandizes of *England*, without exporting any gold or ſilver in coin, plate, &c. on pain of forfeiture. 5 *Hen.* IV. c. 9.

The above law is altered, permitting gold or ſilver bullion, or any foreign coin, or jewels to be exported. Act for Trade, 15 *Car.* II. c. 7.

The ſame extends as well to denizens as ſtrangers, and in ſtrictneſs of law they ought not to receive any gold in payment. But now payment may be made in any of the current coins of this kingdom. 8 *Henry* VI. c. 24. 3 *Hen.* VII. c. 8.

And the reaſons of theſe laws were to keep the gold and ſilver within the realm, and at the ſame time increaſe our manufactures by encouraging their exportation abroad. 1 *Ric.* III. c. 9.

Fore

Foreign merchants are to ſell their merchandize at the port where they land in *groſs*, and not by *retail*.

But goods imported in *Britiſh* built ſhips, being the property of foreigners, ſhall pay alien's duty. 29 Geo. II. c. 34. §. 20. 25 Car. II. c. 6.

Alien's duty taken off upon all the native commodities, coals only excepted, and manufactures of *England* exported by foreigners.

And merchandize is to be laden, and unladen, at certain ports, and in the day-time under penalties. 1 *Eliz.* c. 11.

It ſhall be lawful for *merchants* to tranſport iron, armour, piſtols, muſkets, ſaddles, ſwords, bridles, &c. Stat. 12 *Car.* II. c. 4.

Merchants, &c. corrupting or adulterating wine, or ſelling the ſame adulterated, are liable to penalties. 1 *W.* and *M.* Stat. 1. c. 34.

On importation of tobacco, merchants have an allowance of eight *per cent.* &c. 12 *W.* c. 8.

All merchants ſtrangers, that ſhall be made denizens, either by the king's letters patents, or by act of parliament, muſt pay for their merchandize, like cuſtom and ſubſidy as they ought, or ſhould pay before they were made denizens. 11 *Hen.* VII. c. 14. 19 *H.* VII. c. 8. 1 *Eliz.* cap. 1. Co. 2. Inſt. fol. 742.

The wares, merchandizes, debts, or duties that merchants have as joint-traders or copartners, ſhall not go to the ſurvivor, but ſhall go to the executor of him that is deceaſed*; and the executor may join in an action with the ſurviving merchant. 31 *E.* III. 7. *Co. on Littleton*, fol. 182. 2 *Levinz.* 108. 1 *Vern.* 217.

In copartnerſhips between merchants it is not neceſſary to provide againſt ſurvivorſhip.

If two joint-merchants occupy their ſtock, goods, and merchandize in common, to their common profit, one of them naming himſelf a merchant, ſhall have an account againſt the other, naming him a merchant, and ſhall charge him as *receptor † denariorum*, that is, *as receiver of the money of him B, from whatever cauſe or contract it ſhall redound to the common profit of them* A *and* B, *as may be made appear by* Lex Mercatoria. 10 *H.* VII. 28 *a.*

So where there are two joint merchants, and one of them dies, the other ſhall have account againſt their factor, without the joining of the executor of the deceaſed. Lord *Raymond*, 340.

In an action upon the caſe againſt A, the plaintiff declares upon the cuſtom between merchants, &c. that if two merchants are found in arrear upon account, and they promiſe to pay it at certain days, that any, or either of them may be charged for the whole ſingly; and then ſhewed the account, that A and B were found in arrears ſo much, &c. and promiſed to pay it at certain days, but did not, and the plaintiff brought action againſt A only, and reſolved that it lay. 2 Roll's Abr. 702, 703.

To call a *merchant alien*; *bankrupt*, is actionable. *Tarloot cont. Morriſon.* Yel. Rep. 1.

Debt upon a bill by a merchant to pay foreign coin, amounting to ſo much to be paid upon the feaſt of the Purification called *Candlemas-day*. Upon *non eſt factum* pleaded, verdict for the plaintiff. Moved in arreſt of judgment, that the declaration was not good, becauſe payment at *Candlemas* is not known in our law, yet the judgment was affirmed, for that amongſt merchants ſuch payment is known to be on the 20th of *February*, and the judges ought to take notice of it, being uſed among merchants, for the maintenance of traffick. Bulſt. 134. Yel. 135, 1. Brow. 103. *Perniſon* and *Pountney's* Caſe.

No ſhip ſhall be obliged to come to any port of *England*, nor to abide, againſt the will of the maſter, or of the merchants, whoſe the goods be; and if ſuch ſhips come of their good will, or be driven by misfortune to any port in *England*, and the maſters or merchants will ſell part of their merchandizes, it ſhall be lawful for every man to buy ſuch

* Sed quære, *for it hath ſince been held, that the executor and ſurvivor cannot join, for the remedy ſurvives, though the duty doth not; and therefore on recovery he muſt be accountable to the executor for that.* Martin v. Crump, Salk. 306.

† Co. Litt. 172. lib. Incrat. 17, 18, 19. F. N. B. 117. D.

ſuch merchandize, albeit the ſame be not put to land to ſell; ſo that no merchant other go to meet ſuch ſhips to forſtal the merchandize, ſo that the maſters and mer chants, after they have ſold that which pleaſeth them, and paid the cuſtom, may fre ly depart, and none ſhall diſturb any ſhip to come to any port of *England*, but to th port where the maſters and merchants will of their free will arrive, nor ſhall medd with the ſale of the merchandizes, nor diſturb the merchants; and if any ſet diſtur ance, he ſhall incur a grievous forfeiture to the king. *Confirmed by* 20 Rich. II. c. 28 *Edw.* III. Cap. 13. Sect. 3.

Indebitatus Aſſumpſit for 1000l. for monies had and received, and alſo an *Inſimul Com taſſet*, upon account, the 1000l. became due; the defendant pleaded the ſtatute of lim tations; the plaintiff replied, that he is a merchant, and the proviſo, an exception merchants accounts. By *Twiſden*, *Rainsford*, and *Moreton*, *abſente Kelyng*, ſtated accou between merchants as this caſe is, are not within the proviſo, but only accounts curre *Webber cont. Tyrell.* 1 *Levinz.* 287. 2 *Keeble* 622. 2 *Sand.* 124. where judgment for d fendant; yet the caſe of *Martin* and *Delboe*, 1 *Levinz.* 298, to the contrary upon an a count ſtated between merchants; yet the ſame caſe, 1 *Mod.* 70. judgment for defe dant, 2 *Keeble* 674. 1 *Vent.* 89. and 1 *Ibid.* 465. See likewiſe the caſe of *Farrington* a *Lee*, 1 *Mod.* 268. and 2 *Mod.* 311.

The inhabitants of the iſland of *Jerſey* and *Guernſey* may import into *Great-Brita* goods of their own growth and manufacture cuſtom-free. Stat. 3 *Geo.* I.

No wine, brandy, tobacco, *Eaſt-India* goods, &c. ſhall be brought from the *Iſle Man* into *Great-Britain* or *Ireland*, on pain of forfeiture, &c. 2 *Geo.* I. c. 28.

A woman that uſeth a trade in *London* without her huſband, is chargeable witho him, as a feme ſole merchant; ſhe ſhall plead as ſole, and if condemned, may be p in priſon till ſhe pay the debt; alſo the bail for her are liable if ſhe abſent herſe and the huſband ſhall not be charged. Privil. *Londini.*

It ſhall not be lawful without licence from the king to import by way of mercha dize, gunpowder, arms, ammunition, or utenſils of war, on pain to forfeit the ſame and the importers, or they in whoſe cuſtody ſuch gunpowder, &c. ſhall be found, ſha forfeit treble the value thereof. 1 *Jac.* II. c. 8. Sect. 2.

All perſons who ſhall tranſport beer beyond the ſeas for merchandize ſhall, if ſtranger, before tranſporting, if a ſubject born, then within four months after, brin into this realm, for every ſix tons of beer two hundred of clapboards, fit to make th of, in length three feet and two inches, or elſe the ſame caſk again, or ſo much oth caſks; or if the tranſporting be into *Ireland*, then to bring ſo much ſhaffold board, the clapboard amounteth to. 35 *Eliz.* c. 11. Sect. 2.

No ſtranger ſhall tranſport beyond the ſeas any pilchards, or other fiſh in caſks, u leſs the ſame perſon have brought into this realm, for every ſix tons of fiſh, accordin to the rate aforeſaid of clapboard or caſk, upon pain of forfeiture of the beer, pi chards, and caſk. Sect. 3.

It ſhall not be lawful to tranſport wine caſks out of this realm with beer or bee eager, nor any wine caſks ſhaken, except for the victualling of any ſhip, or of h majeſty's garriſons and forces, upon forfeiture of forty ſhillings for every ton or ca Sect. 4.

Foreign merchants ſhall not tranſport any kind of wares or proviſions in ſhips of whic they are owners or part owners, or of which the ſhip-maſter is an alien, from on port or creek of the realm to another port or creek of the realm, on forfeiture of th goods ſo laden. 5 *Eliz.* c. 5.

Lat

Laws and Regulations reſpecting the Corn Trade.

ALL former laws and regulations, ſo far as they regard the prices, and the duties on corn imported or exported are repealed; and from and after the firſt day of *January* 1774, it is enacted, that whenever the price of middling *Britiſh* wheat, at the ports and places where wheat ſhall be imported into this kingdom, ſhall appear, according to the methods directed by the ſeveral acts of parliament for aſcertaining the rates and prices of corn and grain imported, or as herein after to be directed by this act, to be at or above 48s. *per* quarter; middling *Britiſh* rye, peas and beans reſpectively at or above 32s. *per* quarter; middling *Britiſh* barley, beer, or bigg at or above 24s. *per* quarter; and, middling *Britiſh* oats at or above 16s. *per* quarter: All cuſtoms and duties now payable reſpectively upon wheat, wheat-flour, rye, peaſe, beans, barley, bigg and oats *imported* into this kingdom, ſhall reſpectively ceaſe, determine, and be no longer paid, or payable during the reſpective continuance of ſuch reſpective prices as aforeſaid; and in lieu of the former duties, a duty of only 6d. *per* quarter ſhall be laid on all wheat; of 2d. on every hundred weight of wheat-flour; of 3d. on rye, peaſe, and beans; of 2d. on barley, beer, or bigg; and oats *per* quarter. 13 Geo. III. c. 43.

Corn, grain, &c. imported at the uſual ports, allowed to import it, may be warehoused in the king's warehouſes under the joint locks of the king, and the importers, duty free; but upon taking out any part thereof for home conſumption, the duties are to be paid down in ready money; to be returned upon exporting any part to foreign countries, upon giving bond to the collector of the cuſtoms, that it ſhall not be relanded in any part of *Great Britain* or *Ireland*, &c.

Such corn, grain, &c. imported from *Ireland* and warehouſed intended for home conſumption, if not ſo diſpoſed of, may be carried back to *Ireland*, under the like ſecurities and reſtrictions, as are required for the exportation of any other foreign corn, grain, or flour.

Whenever middling *Britiſh* wheat ſhall appear to be at or above 44s. *per* quarter; rye, peaſe, or beans at 28s.; barley, beer, or bigg at 22s.; oats at 24s.; at the ports where they are intended to be *exported:* It ſhall not be lawful to export the ſame directly or indirectly, under the penalty of forfeiture of the commodity, and of the ſhip, veſſel or boat on which it is laden; and 20s. *per* buſhel additional fine, on every buſhel of corn, grain, &c. attempted to be exported by offenders againſt this act.

This not to extend to the ſuſtenance of ſhips of war, nor to veſſels carrying the ſaid articles coaſt-wiſe. Nor to grain exported to *Ireland*; nor to ſuch of our forts, garriſons, and ſettlements in foreign parts, as ſhall by this, or ſubſequent acts be allowed certain ſtipulated quantities yearly; though *Britiſh* corn, &c. be above the price at which it is allowed to be exported.

After the firſt of *January*, 1774, all the former *bounties*, allowed by law upon the exportation of any ſort of corn or grain, ceaſe and determine, and the following bounties take place, and ſtill continue; all the regulations of this act being made a permanent law. Whenever middling *Britiſh* wheat, or malt made of wheat, ſhall be under 44s. *per* quarter, a bounty of 5s. *per* quarter, ſhall be allowed upon the exportation in *Britiſh* ſhipping, whereof the maſter, and two-thirds of the mariners, at leaſt, are of his majeſty's ſubjects. On rye, when under 28s. *per* quarter, a bounty of 3s. On barley, beer, or bigg, when under 22s. a bounty of 2s. 6d. *per* quarter; and the ſame on malt made of theſe grains. On oats, when under 14s. a quarter, 2s. and 2s. 6d. for oatmeal, reckoning 226lb. averdupois to the quarter.

When oatmeal does not exceed 16s. in *Scotland*, *per* boll, weighing eight ſtone troy; it ſhall not be imported from *Ireland*, or any foreign parts beyond the ſeas, into the ſaid country, under forfeiture of the ſhip and her appurtenances, and a penalty of treble the value of the oatmeal, on all perſons aiding or aſſiſting in landing it. But when oatmeal in any port or place in *Scotland* does exceed the price of 16s. *per* boll, the importation from *Ireland*, or any other part beyond the ſeas, is allowed.

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Laws

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In

In the year 1756, a very great ſcarcity of corn happened all over *Europe*, and large exports having been made the preceding year from *Great-Britain*, the poor ſuffered greatly from the dearneſs of this firſt neceſſary of life; for remedy thereof ſundry acts of parliament were made, which continued in force till the year 1759, when plenty was again reſtored. In the month of *June* 1767, wheat was at the enormous price of 3l. 12s. *per* quarter, and all other grain in proportion. An act was then made to prohibit, for a limited time, the exportation of corn, malt, meal, flour bread, biſcuit, and ſtarch. Alſo an act to diſcontinue the duties on the *importation* of corn and flour; and to permit the *importation* in neutral ſhips. But in the year 1780, the abundance of corn was ſo great, that an act was paſſed, to allow the *exportation* in foreign ſhips belonging to any nation in amity with *Great-Britain*. Alſo, half the bounty allowed on exportation in *Britiſh* bottoms.

The officers of the cuſtoms ſhall admeaſure all corn whereon there is an allowance payable for exportation, and ſuch admeaſurement ſhall be made by a meaſure containing four *Wincheſter* buſhels; and if ſuch corn ſhall be brought to be ſhipped in ſacks, the officers are to make choice of two of theſe ſacks, out of any number not exceeding twenty, before the ſame ſhall be put on board, and thereby compute the quantity intended to be ſhipped, and, according to ſuch computation, the allowance ſhall be paid to the exporter, upon his producing a certificate from the officers of the cuſtoms, atteſting the quantity and quality of the corn ſhipped for exportation. 2 *Geo.* II. c. 18 Sect. 4.

The like regulations ſhall be extended to the aſcertaining the prices and quantity of beer or bigg, oatmeal and wheat malt, intended for exportation; *provided*, that nothing in this act ſhall alter the preſent practice of ſhipping corn from the port of London; but the ſame may be meaſured by ſworn meters, by whoſe certificate the ſearchers or other officers of the cuſtoms are to certify the quantity of corn ſhipped for exportation, as hath been practiſed. 2 *Geo.* II. c. 18. Sect. 5.

It ſhall be lawful for the juſtices of peace, for the ſeveral counties within *England*, *Wales*, and *Berwick*, wherein foreign corn ſhall be imported, at their quarter ſeſſions, to give in charge to the grand jury, to make preſentment of the market prices of middling *Engliſh* corn of the ſorts mentioned in an act 22 Car. II. Cap. 13. 5 *Geo* II. c. 12. Sect. 1.

Regiſters were appointed to be kept of the prices at which corn is ſold in the ſeveral counties of *Great Britain*, and of the quantity exported and imported. The juſtices at the quarter ſeſſions to order weekly returns to be made throughout the year, of the prices of wheat, rye, barley, oats, beans, and bigg, from not leſs than two, or more than ſix market towns in each county, and to appoint a perſon to receive the ſaid returns. Meal-weighers in *London* to make a weekly return of the average prices. The perſons making the returns to be paid out of the county rates. The returns to be tranſmitted to the treaſury, where a perſon is to be appointed to receive them, and to publiſh them, or abſtracts from them weekly in the *London Gazette*. Commiſſioners of the treaſury to keep an account of the quantities of corn exported and imported, and of the duties and bounties paid thereon. This proved a very ſalutary act for aſcertaining the true price of corn throughout the kingdom, and for judging of the plenty or ſcarcity. 10 *Geo.* III. c. 39.

The

The following is a copy of the weekly returns, when corn roſe above the price at which the bounty ſtops:

AVERAGE PRICES of CORN, from Oct. 14, to Oct. 19, 1789.

Per buſhel	Wheat s.	d	Rye s.	d	Barl. s.	d.	Oats s.	d.	Beans s.	d.
London	6	1	3	1	2	8	2	1	2	9
COUNTIES INLAND.										
Middleſex	6	4	0	0	2	7	2	4	3	2
Surry	6	3	3	1	2	9	2	2	3	9
Hertford	6	5	3	5	2	9	2	4	3	8
Bedford	6	1	3	5	2	5	2	1	3	5
Cambridge	6	4	3	4	2	5	2	11	2	9
Huntington	5	10	0	0	0	0	1	10	2	9
Northampton	6	7	3	8	3	0	2	1	3	4
Rutland	6	3	3	9	3	2	2	1	4	0
Leiceſter	6	7	4	4	3	1	2	2	3	8
Nottingham	6	0	3	5	2	11	2	1	2	10
Derby	5	10	0	0	0	0	2	6	3	9
Stafford	7	2	0	0	3	4	2	5	4	9
Salop	7	2	4	9	3	9	2	7	4	4
Hereford	7	3	0	0	0	0	2	7	0	0
Worceſter	7	7	4	0	3	2	2	8	4	3
Warwick	7	2	0	0	3	1	2	8	3	11
Glouceſter	7	7	0	0	3	1	2	0	3	9
Wilts	7	1	5	5	2	10	2	5	4	3
Berks	6	10	3	9	2	9	2	3	3	7
Oxford	7	4	0	0	2	9	2	2	3	11
Bucks	6	4	0	0	2	9	2	1	3	4

COUNTIES upon the COAST.

	Wheat		Rye		Barl.		Oats		Beans	
Eſſex	5	11	0	0	2	5	2	0	2	8
Suffolk	5	10	3	3	2	5	1	11	2	11
Norfolk	5	8	3	3	2	5	2	2	0	0
Lincoln	5	6	3	0	2	8	1	10	3	0
York	5	8	3	7	2	11	1	10	3	8
Durham	5	4	3	10	2	11	2	2	3	8
Northumberland	5	1	3	7	2	7	1	9	3	3
Cumberland	5	11	3	7	3	0	1	11	3	10
Weſtmorland	6	0	3	10	3	0	2	1	0	0
Lancaſhire	6	6	0	0	0	0	2	4	4	0
Cheſhire	6	8	0	0	3	8	2	2	0	0
Monmouth	7	0	3	5	3	7	2	0	0	0
Somerſet	7	0	3	6	3	0	2	3	4	1
Devon	6	6	0	0	2	11	1	6	0	0
Cornwall	5	9	0	0	3	0	1	6	0	0
Dorſet	7	6	0	0	2	10	2	3	4	1
Hants	6	5	0	0	2	9	1	11	3	8
Suſſex	5	11	0	0	2	8	1	11	3	5
Kent	6	3	0	0	2	7	2	2	2	8
WALES.										
North Wales	6	7	4	10	3	6	1	10	4	10
South Wales.	6	6	4	8	3	5	1	10	3	4

And in the month of *December* following, wheat roſe to 53s. *per quarter*, when an embargo was laid on all ſhips laden with corn for exportation; and the ports were opened for the importation of *American* wheat and flour in *Britiſh* built ſhips.

By this act, which commenced and took place *September* 29, 1789, additional regulations are made, which merit inſertion in this place, the ſubject being of the firſt importance. To guard, as much as poſſible, againſt falſe or partial returns, every corn factor, from whom any return is required by the 21 *George* III. ſhall, within one calendar month from the time of his beginning to deal by commiſſion in the ſale of corn and grain, take the following oath, or, being one of the people called *Quakers*, affirm; *videlicet*,

I *A. B.* do ſwear (or affirm) that the returns of the prices and quantities of *Britiſh* corn and grain, which henceforward ſhall be, by or for me, ſold and delivered, ſhall, to the beſt of my knowledge and belief, contain the whole quantity, and no more, of the corn *bonâ fide* ſold and delivered, by or for me, within the period to which they ſhall refer, with the prices and names of the buyers reſpectively; and, to the beſt of my judgment, conformable to the direction of an act paſſed in the twenty-firſt year of the reign of his preſent majeſty, intituled, *An act for further regulating and aſcertaining the importation and exportation of corn and grain, within the ſeveral ports and places therein mentioned.* 29 *Geo.* III. c. 58.

Any perſon carrying on the trade or buſineſs of a corn factor, without taking the ſaid oath, is ſubjected to a penalty of fifty pounds.

The inſpector of the corn-returns at the corn exchange, London, to receive from every corn-factor in London, and the ſuburbs, a weekly return of the corn brought into the Thames, eaſtward of London-bridge, which was ſold by him during the preceding week.

The average prices formed from the weekly returns, to be deemed the common price of middling Britiſh corn within *London*, *Eſſex*, *Kent*, and *Suſſex*.

For the purpoſes of this act, the maritime counties of *England* are to be divided into diſtricts; and the juſtices at the next Michaelmas ſeſſions, ſhall ſelect a number of principal market-towns, from which, and the ſea ports having peculiar juriſdictions, the price of corn for each county ſhall be taken.

Millers purchaſing Britiſh corn and grain for ſale, are, by this act, obliged to make true and juſt returns, upon oath, of the quantities ſo bought by them, within three calendar months after the paſſing this act; or within one month after they ſhall begin to deal in corn and grain; the returns to be weekly accounts, and to be delivered to the corn-inſpector of the market, where the purchaſes were made; under a penalty of ten pounds for every omiſſion.

No debenture for a bounty on exportation of any corn, grain, or flour, ſhall be made out or granted for the allowance of any bounty on any corn, grain, or flour, entered or ſhipped for exportation from any port within any of the diſtricts, during the time that foreign corn, or grain of the ſame ſpecies is allowed to be imported into ſuch diſtricts at the low duties.

No warrant, cocket, &c. ſhall be granted for carrying to ſea, from any port within *England*, *Wales*, and *Berwick*, to any other port of the ſame, any foreign corn after importation thereof; and no perſon ſhall tranſport any foreign corn, or foreign corn mixed with *Engliſh*, under penalty, that all ſuch corn that ſhall be tranſported or laden contrary to this act ſhall be forfeited, and every offender ſhall forfeit 20s. for every buſhel of ſuch corn, and the ſhip upon which ſuch corn ſhall be laden, ſhall be forfeited; and the maſter and mariners of ſuch ſhip, wherein ſuch offence ſhall be committed, knowing ſuch offence, and aſſiſting thereunto, ſhall be impriſoned three months. 5 *Geo.* II. c. 12. Sect. 5.

If any perſon beat, wound, or uſe any violence to hinder one from buying corn, and ſhall ſtop or ſeize on any carriage laden with wheat, flour, &c. and deſtroy the ſame, or ſhall take away, or hurt any of the horſes or drivers, &c. upon conviction, he ſhall be ſent to goal or houſe of correction, and be kept to hard labour, nor exceeding three months, nor for leſs than one, and ſhall be once publickly whipped at the market-place on a market-day. 11 *Geo.* II. c. 22. Sect. 1.

If

If any perſon after conviction ſhall commit any of the offences a ſecond time, or ſhall pull down or deſtroy any ſtore-houſe, or place where corn ſhall be kept to be exported, or ſhall enter on board any ſhip, and from either of theſe depoſitaries carry away or deſtroy any corn, meal, &c. ſuch offenders ſhall be adjudged guilty of felony, and ſhall be tranſported for ſeven years. Sect. 2.

The inhabitants of every hundred in England, wherein ſuch offence ſhall be committed, ſhall make ſatisfaction for all damages ſuſtained, not exceeding 100l. Sect. 5.

Provided that no perſons be enabled to recover damages by this act, unleſs they by themſelves or their ſervants, within two days after damage done, ſhall give notice of ſuch offence to one of the conſtables of the hundred or to the headborough, &c. of the town, &c. in or near which ſuch fact ſhall be committed, and ſhall within ten days after ſuch notice give in their, or their ſervants examinations upon oath, before any juſtice of peace where ſuch fact ſhall be committed. Sect. 6.

Where any offence ſhall be committed againſt this act, and any one of the offenders ſhall be apprehended and convicted within twelve months after the offence, no hundred ſhall be liable to make ſatisfaction. Sect. 7.

No perſon ſhall be enabled hereby to ſue or bring any action againſt any hundred till after the expiration of one year, nor unleſs the parties ſuſtaining ſuch damage ſhall commence their action within two years after the offence. Sect. 8.

If any goods of any merchant born denizen ſhall be taken by enemies or pirates upon the ſea, or periſh in any ſhip that ſhall be taken or periſhed, whereof the duties ſhall be paid or agreed for, and that duly proved before the treaſury or chief baron of the exchequer, by the examination of the merchants, or by two witneſſes, or other reaſonable proof; the ſame merchants may newly ſhip in the ſame port where the goods were cuſtomed ſo much other goods as the goods loſt ſhall amount unto in cuſtom, without paying any thing, ſo as the proof be recorded and allowed in the exchequer, and certified to the collectors of the port; and every merchant denizen, who ſhall ſhip goods in any carrack or galley, ſhall pay all cuſtoms and ſubſidies as an alien born. 12 *Car.* II. Cap. 4. Sect. 4.

Provided that it ſhall be lawful to all ſubjects to tranſport in ſhips, and other veſſels of ſubjects, all herrings and other ſea-fiſh to be taken by ſubjects out of any port, to any place out of his majeſty's dominions without paying cuſtom. Sect. 5.

It ſhall be lawful for any perſon to tranſport by way of merchandize any of theſe goods following, *viz.* Iron, armour, bandoleers, bridle-bits, halbert-heads, and ſharps, holſters, muſkets, carbines, fowling-pieces, piſtols, pike-heads, ſword and rapier-blades, ſaddles, ſnafflers, ſtirrops, calf-ſkins dreſſed or undreſſed, geldings, oxen, ſheep-ſkins dreſſed without the wool, and all manufactures made of leather, paying the rates appointed by this act. Sect. 10.

It ſhall be lawful for any perſon to tranſport by way of merchandize gunpowder, when the ſame doth not exceed the price of 5l. *per* barrel: But this is conſtantly prohibited by proclamation in time of war; together with arms, ammunition, and warlike ſtores, unleſs ſpecial licence is granted for exporting them to particular countries in alliance with *Great Britain.* Sect. 12.

Merchants or their agents, or any other perſons, inticing or ſeducing *Britiſh* manufacturers, artificers, and workmen to leave the kingdom and go abroad to carry on their arts in foreign countries are liable to a penalty (on conviction) of 500l. and one year's impriſonment; and for the ſecond offence 1000l. and two years impriſonment. Alſo perſons exporting the tools and utenſils made uſe of in the woollen and ſilk manufactures, forfeit the ſaid tools, and are to pay a fine of 200l. maſters of ſhips receiving ſuch utenſils on board ſubject to a penalty of 100l. Cuſtom-houſe officers ſigning cockets for exporting them to forfeit 100l. and loſe their employments.

Having now quoted the laws in force, more immediately concerning merchants, who cannot always act without their ſubſtitutes and dependents, the tranſition is natural from the former to the latter, and I ſhall therefore proceed to treat of them in order.

Of

Of Factors, Supercargoes, and Agents.

AS theſe are all perſons acting by deputation for account of the principals who employ them, to whoſe orders they are obliged to conform, on a curſory view it ſhould ſeem that they mean one, and the ſame thing. But in the preſent mercantile ſyſtem they differ materially with reſpect to the extent of their powers, and the nature of their employments. It will therefore be neceſſary to treat of them ſeparately.

FACTORS are perſons appointed by written commiſſions from private merchants or commercial companies to reſide in foreign countries, to tranſact the buſineſs of ſelling the commodities exported by their principals and conſigned to them, to purchaſe other merchandize in the countries where they reſide, to be ſent home to their principals; and to negociate bills of exchange and remittances in money, for the ſale, or purchaſe of ſuch merchandize, or the balance of accounts. There are likewiſe factors concerned in the domeſtic trade of a country, and in that which is carried on between different parts of the dominions of the ſame ſovereign. Theſe uſually reſide at the capital of the kingdom, or in ſome great maritime city. Thus, we have *Iriſh* and *Scotch* linen factors in *London*, *Liverpool*, *Briſtol*, &c. Alſo *Blackwell-Hall* or woollen factors, cheeſe factors, and a number of other perſons, falſely paſſing under the denomination of merchants, whoſe employment is to ſell upon commiſſion for the great manufacturers, their principals, the various product of their manufactories. All theſe factors are ſubject to ſtipulations, rules and regulations peculiar to the branch of buſineſs in which they are engaged, which are expreſſed in the commiſſions, letters or other written contracts between them and their principals, and they differ ſo materially, that no general laws can be adapted to them all; for every conteſt between a factor and his principal muſt be determined by the ſpecial conditions of the contract between them. For this reaſon, we can only ſtate the general qualifications of factors, and ſome law-precedents upon caſes that have been decided in the courts of law.

A factor differs from a ſervant in this, the ſervant receives wages, and if he commits a fault only incurs diſpleaſure, he is likewiſe confined to act only for his maſter. A factor may tranſact buſineſs for ſeveral principals, he acts under contract, receives a conſideration of ſo much *per cent.* on the invoice or value of the commodities he buys or ſells, which is called *commiſſion* or *factorage*, and is reſponſible in all reſpects to his principal: He ought therefore to keep ſtrictly to the tenor of his orders, as a deviation from them, even in the moſt minute particular, expoſes him to make ample ſatisfaction for any loſs that may accrue from his non-obſervance of them; and it is very reaſonable it ſhould be ſo, as the diſtance of his ſituation renders him unable to judge of his principal's views and intentions; therefore he ſhould ſubmit implicitly to them, though always exerting his beſt endeavours for the merchant's intereſt, as his gain is certain, whilſt his employer's is precarious.

When unlimited orders are given to factors, and they are left to ſell or buy on the beſt conditions they can, whatever detriment occurs to their conſtituents, they have their excuſe in their hands, as it is to be preſumed they acted for the beſt, and were governed by the dictates of prudence.

A factor is barely a truſtee for his principal; therefore, if this latter, having goods in the other's hands, owes him money by ſimple contract, and then dies indebted by ſpecialty, more than his aſſets are worth, the factor cannot retain the goods. 2 *Vern.* 117. 1 *Vern.* 428. and 2 *Vern.* 638.

If a factor receives only a bare commiſſion to ſell and diſpoſe, it will not enable him to truſt; for, in the due execution of his authority, he ought on a ſale to receive *quid pro quo*; and, on the delivery of the one, to receive the other; for, otherwiſe, by that means, as they may truſt ſix months, they may truſt ſixteen years; nor by virtue of any clauſe in their orders that leaves them at liberty to act as they think beſt, or of doing as if the affair was their own, may they truſt an unreaſonable time, as ten or twenty

twenty years, inſtead of one, two or three months, ſuppoſing this the accuſtomary time of credit for the like commodities: and ſo it was adjudged, where one had remitted jewels to his factor in *Barbary*, who diſpoſed of the ſame to *Mulleſhack* the emperor, for a ſum certain to be paid at a time, which being elapſed, the factor not obtaining it, was forced to make the ſame good to his principal.

Again, one and the ſame factor may, and generally does, act for ſeveral merchants, who muſt run the joint riſk of his actions, though they are mere ſtrangers to one another; as if five merchants ſhall remit to one factor five diſtinct bales of goods, and the factor makes a joint ſale of them to one man, who is to pay one moiety down, and the other at ſix months end; if the buyer breaks before the ſecond payment, each man muſt bear a proportionable ſhare of the loſs, and be contented to accept of their dividend of the money advanced.

But if ſuch a factor draws a bill of exchange upon all thoſe five merchants, and one of them accepts the ſame, the others ſhall not be obliged to make good the payment. *Tamen quære de hoc.* Salk. 126.

And as the authority and truſt repoſed in factors is very great, ſo ought they to be provident in their actions for the benefit of their principals; and therefore, if factors ſhall give time to a man for payment of monies contracted on ſales of their principal's goods, and after the time is elapſed they ſhall ſell goods of their own to ſuch perſons for ready caſh (leaving their principal's unreceived) and then ſuch men break and become inſolvent, the factors, in equity and honeſty, ought to make good the loſſes; for they ought not to diſpenſe with the non-payment of their principal's monies, after they become due, and procure payment of their own to another man's loſs, though by the laws of *England*, they cannot be compelled. *Heath.* verſ. *Turner Winch.* 24, 25.

If goods are remitted to a factor, and upon arrival he ſhall make a falſe entry at the *cuſtom-houſe*, or land them without entering, whereby they ſhall incur ſeizure, or forfeiture; whatſoever the principal is endamaged, he muſt inevitably make good, nor will ſuch general clauſe help him, as above; but, if a factor makes his entry according to invoice, or his letters of advice, and it happens that theſe are erroneous, if the goods are then loſt, the factor is diſcharged. *Leviſon* verſ. *Kirke* Trin. 7. *Jac.* in B. R. *Lane's* Rep. 65.

If a factor ſells goods, either by themſelves or among others, without adviſing his principal, and afterwards deals with the perſon to whom he ſold them in other accounts, if the perſon becomes inſolvent, the factor ſhall be anſwerable to his principal, whom he did not adviſe in time of the ſale of his goods; it ſhall be deemed the ſame as if he had ſold them contrary to orders.

If a factor, by error of account, wrongs his employers, he is to make good not only the principal, but intereſt for the time; if the error is to the factor's own wrong, his principal is to anſwer it in like manner.

And as fidelity, diligence, and honeſty, are expected in the factor, ſo the law requires the like from his employer, judging the act of the one to be the act of the other; and, therefore, if a merchant ſhall conſign counterfeit jewels to his factor, who ſells and diſpoſes of them for valuable conſiderations, as if they were real; if the factor receives any loſs or prejudice thereby, by impriſonment or other puniſhment, the merchant ſhall not only make good the damage to the factor, but alſo render ſatisfaction to the party damnified: And ſo it was adjudged, where one *How* was poſſeſſed of three counterfeit jewels, and having factors in *Barbary*, and knowing one *Southern*, a merchant was reſident on the place, conſigns thoſe jewels to his factor, who receiving them, treated *Southern* to ſell them for him, telling him that theywere good jewels; whereupon *Southern*, not knowing they were counterfeit, ſold them to the king in whoſe dominions he reſided, for 800l. they being worth really but 100l. and delivered the money to the factor, who remitted the ſame to *How*: The king, not long after, finding himſelf defrauded, committed *Southern* to priſon, till he repaid the eight hundred pounds. Whereupon *Southern* coming to *England*, brought his action againſt *How*, and had judgment to recover his damage; for the principal ſhall anſwer for his factor in all caſes, where he is privy to the act or wrong: And ſo it is in contracts, if a factor ſhall buy goods on the account of his principal, eſpecially if he has uſed ſo to do, the contract of the factor will oblige the principal to a performance of the bargain. 2 Rolls, 5. 2. *Cro.* 468. *Bridgman*, 126, 127. *Popham*, 143.

When

When factors have obtained a profit for their principal, they muſt be cautious how they diſpoſe of it, for if they act without commiſſion or order, they become reſponſible. Goods remitted to factors ought, in honeſty, to be carefully preſerved, as the truſt repoſed in them is great; and therefore a factor robbed, in an account brought againſt him by his principal, the ſame ſhall diſcharge him *. And ſo it is, if a factor buys goods for his principal, which afterwards happen to be damnified, the principal muſt bear the misfortune; but, if a factor ſhall diſpoſe of the goods of his principal, and take money that is falſe, he ſhall make good the loſs; yet, if he receives monies, and afterwards the ſame is by edict or proclamation leſſened in value, the merchant, and not the factor, muſt, in that caſe, bear the loſs.

The factor muſt likewiſe be careful in regard to letters of credit, obſerving nicely whether they are for a time limited, or to ſuch a value, or not exceeding ſuch a ſum, or general; as he may otherwiſe bring himſelf into conſiderable loſſes.

If a merchant remits goods to his factor, and about a month after draws a bill on him, the factor, who having effects in his hands, accepts the bill; and then the merchant breaks, againſt whom a commiſſion of bankrupt is awarded, and the goods in the factor's hands are ſeiſed; it has been conceived, the factor muſt anſwer the bill notwithſtanding, and come in a creditor for ſo much as he was enforced by reaſon of his acceptance to pay. *Quere*, if equity may not relieve in ſuch caſes.

A factor, who enters into a charter-party with a maſter for freightment, is obliged by the contract; but if he loads aboard generally, the goods, the principals, and the lading are made liable for the freightment, and not the factor.

The factor, having money in his hands appertaining to his principal, receives orders from him to make inſurance on ſhips and goods, as ſoon as he has loaded, which, if he has neglected to perform, and the ſhip miſcarries, he ſhall, by the cuſtom of merchants, be obliged to make good the damage; and, in caſe of loſs, he ought not to make a compoſition without orders from his principal.

One joint-factor may account, without his companion, by the law of merchants; for factors are oftentime diſperſed, ſo as they cannot be both preſent at their accounts. *Goore* and al. cont. *Dawbeny* 2 *Leon.* 75. 79.

A merchant delivered goods to be ſold in *Spain*, and the factor ſells them to one who becomes a bankrupt: We judge here that he ſhall be diſcharged. In *Capp's* and *Tucker's* caſe, 2 *Rolls's* Repts. 497. 1 *Vent.* 113.

In account, it was held *per curiam*, that if a man delivers money to his bailiff or factor to lay out for him in commodities, he cannot bring an *aſſumpſit*, but only an account; for it may ſo happen, that the factor hath laid out more money than he hath received.

A factor ſhould always be punctual in the advices of his tranſactions, in ſales, purchaſes, affreightments, and more eſpecially in draughts by exchange; for if he ſells goods on truſt without giving advice thereof, and the buyer breaks, he is liable to trouble for his neglect; and if he draws without adviſing his having ſo done, he may juſtly expect to have his bill returned proteſted, to his no ſmall detriment and diſcredit.

If a factor deviates from the orders he receives in the execution of a commiſſion for purchaſing goods, either in price, quality, or kind, as if after they are bought, he ſends them to a different place from that he was directed to, they muſt remain for his own account, except the merchant, on advice of his proceedings, admits them according to his firſt intention.

A factor who ſells a commodity under the price he is ordered, ſhall be obliged to make good the difference; and if he purchaſes goods for another at a price limited, and afterwards they riſe, and he fraudulently takes them for his own account, and ſends them to another part, in order to ſecure an advantage that ſeemingly offers, he will, on proof thereof, be obliged, by the cuſtom of merchants, to ſatisfy his principal for damages.

If

* *Southcote's* Caſe, *Cok.* Lib. 4. Fol. 84.

If a factor, in conformity with a merchant's orders, buys with his money, or his credit, a commodity he ſhall be directed to purchaſe, and, without giving advice of the tranſaction, ſells it again to profit, and appropriates to himſelf the advantage, the merchant ſhall recover it from him, and beſides have him amerced for his fraud.

If a merchant orders his factor to ſhip him a ſum in the current coin of a kingdom when exportation is prohibited, and the money is ſeized in endeavouring to get it aboard, the loſs is for the merchant's account, and not the factor's.

If a factor pays money of a merchant's without his orders, it is at his own peril; and if he lends his caſh without his leave, though he propoſes the intereſt ſhall be the merchant's, and any loſs happens before his principal's determination about it be known, it ſhall remain to the factor.

SUPERCARGOES are perſons employed by commercial companies, or private merchants, to take charge of the cargoes they export to foreign countries, to ſell them there to the beſt advantage, and to purchaſe proper commodities to re-lade the ſhips on their return home. For this reaſon, ſupercargoes generally go out and return home with the ſhips on board of which they were embarked, and therein differ from factors who reſide abroad, at the ſettlements of the publick companies for whom they act. The *Eaſt India* company only ſend out ſupercargoes to places where they have no factories, and ſometimes the chief ſupercargo remains at the place of a ſhip's deſtination for a time, waiting the arrival or return of other ſhips, and acting as factor for the company.

AGENTS are perſons employed in the different departments of commerce, the law, the army, and the navy.

COMMERCIAL AGENTS are frequently appointed to ſettle accounts, and diſpoſe of the effects of merchants and other perſons dying, or failing in foreign countries, or at home; their commiſſion terminates with the particular buſineſs for which they were appointed; and they generally give ſecurity for the truſt repoſed in them. Agents are likewiſe appointed by colonies, and particular diſtricts of colonies, to tranſact the public commercial concerns of the places from which they are deputed, with the officers under the government of the mother country to which they belong. It is their duty to preſerve the commercial rights and franchiſes of their principals, to preſent petitions againſt any meaſures that are about to be taken detrimental to their intereſt, and regularly to correſpond with them upon theſe ſubjects, and alſo to conſult and advice with the merchants, planters, and others intereſted in the welfare of the ſaid colonies, and reſiding in the mother country. Such were the agents for *Carolina*, *Virginia*, and the other colonies of *North America*, before the revolt of thoſe colonies. And ſuch at preſent are the agents for our *Weſt India* iſlands and other ſettlements abroad, their public buſineſs lies chiefly with the board of trade and plantations, and the ſecretary of ſtate for the colonies.

SHIPS HUSBANDS; a claſs of agents ſo called, whoſe chief employment in capital ſea-port towns, particularly in the port of London, is, to purchaſe the ſhip's ſtores for her voyage; to procure cargoes on freight; to ſettle the terms and obtain policies of aſſurance; to receive the amount of the freight both at home and abroad; to pay the captain or maſter his ſalary, and diſburſements for the ſhip's uſe; and, finally, to make out an account of all theſe tranſactions for his employers, the owners of ſhips, to whom he is, as it were, a ſteward at land, as the officer bearing that name is, on board, when the ſhip is at ſea. The general commiſſion allowed to ſhips huſbands on their accompts is *two per cent.*

Of the LAW AGENTS little notice need be taken in this work, eſpecially as it is a limited term, and moſtly confined to ſuch attornies and ſolicitors as are appointed to manage appeals to the houſe of lords, from decrees of the inferior courts of judicature of *Great Britain* and *Ireland*. It is their buſineſs to preſent the petitions for appeals to be heard, to produce and attend the witneſſes to be ſworn, and to retain the counſel.

ARMY and NAVY agents receive the pay, wages, penſions, and frequently the prize-money of the officers of the army and navy, their wives, widows, and children, and keep caſh accounts for them, nearly in the ſame manner as bankers for merchants. They likewiſe paſs the commiſſions of officers through the proper offices. All this buſineſs they tranſact in virtue of letters of attorney from their principals, and wills. When they have caſh in hand, officers may draw upon their agents, from any part of the

the globe, where they ſhall happen to be ſtationed; and for men of approved character and credit agents will frequently advance money by anticipation upon their wages, pay, &c. having full powers to reimburſe themſelves from their accruing effects.

Of Ships, Owners, Captains, and Sailors.

THE great advantages that ariſe from trade to a nation have been fully proved by the introductory diſcourſe, and, as I have therein given a deduction of it from the earlieſt times, the ſeparate hiſtory of navigation would be *here* ſuperfluous, as *this* and *commerce* are ſo blended, or more properly only diſtinct parts of the ſame thing, that having ſpoken ſo largely of the one, I have little room, and leſs need, to expatiate much on the other in an hiſtorical way; however, if any gentleman inclines to a ſeparate account of them, he will find his taſte fully gratified, and expectation anſwered, on reading the hiſtory of navigation, ſuppoſed to be wrote by the celebrated Mr. *Locke*, prefixed to *Churchill*'s collection of voyages and travels; but to omit it as inconſiſtent with my intended conciſeneſs, I ſhall proceed to particularize the integral parts of maritime affairs; and, as a *ſhip* is a principal one in them, and, indeed, without which, no commerce could be carried on, I ſhall begin with this wonderful piece of art.

The name, *Navis*, is derived from the effect, that is, *à navigando*, *ſailing*, and the uſe of it is certainly both neceſſary and profitable to every common-wealth capable of employing it. *Franc. Roccus de Nav. Nau. & Affec. Not.* 1.

Who was the firſt architect of theſe floating fabricks has been hitherto conteſted, and therefore, in all probability, will now never be known; however, rejecting the fabulous ſtories of *Dædalus*, *Janus*, &c. it is natural to ſuppoſe *Noah*'s ark inſpired the idea, and that *it* ſerved as a pattern to be improved by the firſt *navigator*, though, as there was no occaſion for *ſuch*, till about three centuries after the confuſion at the *Tower of Babel* had diſperſed its builders, ſo we may reaſonably conjecture that occurrence to have been the epocha from which *navigation* took its beginning; as providence chaſtiſed their audacious attempt to ſcale heaven, by diſperſing the offenders over the face of all the earth, and conſequently in their peregrinations they muſt have found it neceſſary to invent ſome ſort of veſſels for their conveyance croſs thoſe great rivers, which undoubtedly ſometimes impeded their progreſs, by lying in the way of their journey: How they managed in their maritime affairs, when they reached the ſea, hiſtory leaves us in the dark; but neceſſity would certainly inſpire them with ſome means of ſupplying themſelves with its products; and it is natural to believe, they went on improving the firſt invention, as they had occaſion to diſcover its defects, till by ſucceſſive improvements it was brought to the perfection in which we now ſee and admire it.

The *Phœnicians*, who are the ſame the ſcripture calls the *Philiſtines* or *Canaanites*, as is largely proved by *Bochart* and others, are generally allowed to have been the firſt and ableſt mariners we read of; yet the *commerce* of thoſe early ages did not require veſſels of ſuch ſtrength and compactneſs as latter times have, to reſiſt the ſtorms and tempeſts they are now expoſed to, by launching out into the main ocean, and engaging in long and hazardous voyages unknown, and conſequently, unattempted by infant-navigation. For tho' theſe people were bold and daring enough to engage in ſeveral long voyages, as to *Ophir*, &c. in which they muſt croſs many ſpacious gulphs and bays, to avoid expending a vaſt ſpace of time in coaſting round them, yet it is hardly credible they ever ventured to croſs that immenſe body of waters, that lie between *Europe* and *America*, as ſome ſuppoſe, and the reflection on their doing what they did without the aſſiſtance of the compaſs, then undiſcovered, I muſt confeſs is to me a matter of no ſmall ſurpriſe; for, though a learned author ſuppoſes them to have conducted their navigation by the ſun's courſe in the day, and by that of the ſtars in their nocturnal ſailing, and that they only ventured to ſea during ſummer; yet, when one conſiders, that theſe guides muſt be frequently loſt to them by cloudy weather, even in that ſeaſon, not only for a little while, but often for days together, and conſequently their knowledge of them, let it have been as great as the ſaid author conjectures, by this intervening occur-

rence rendered unſerviceable, we muſt allow them to have been daring adventurers, in combating the frowns and ruffles of a lowring ſky, which muſt frequently have been too boiſterous for their little ſkill and ſlight-built veſſels to reſiſt or evade, and to riſk the imminent dangers they expoſed themſelves to on that fickle element, by their engaging in thoſe voyages, which might then be juſtly counted long and dangerous.

The *Greeks*, who were their ſcholars in this ſcience, greatly improved it, and gave their maſters ſeveral ſignal overthrows in their naval encounters, as at the famous battle of *Salamis*, &c. and though the *Romans* ſucceeded the *Greeks* in their profeſſion of this art, and undoubtedly their practice muſt lead them to the diſcovery of its defects, and, conſequently, to that of its improvement, yet they and ſeveral ſucceeding ages ſtill laboured in the dark, till providence, about the year 1300, diſcovered the loadſtone's virtue, and by this means diſſipated the miſts of gueſs-work, and rendered navigation more clear and certain: It is to this happy diſcovery we owe *that* of new worlds, and the great improvement of maritime affairs, ſince brought to ſuch perfection.

The fabrick of ſhips has been various, as occaſions have required, and invention could dictate, to make them anſwer the intent, which variety continues to this very day, not only between nations, but even in the ſame country, ſome being built for war, ſome for ſailing, and others with the lucrative view of ſtowing well, and each has a name properly adapted, as gallies, frigates, &c. and the increaſe of theſe, and improvement of navigation, has always ſo much merited the attention of legiſlators from the earlieſt times, as to have occaſioned many excellent laws being made for theſe purpoſes in different countries. Of the Britiſh laws, the moſt celebrated, which has been admired for its ſound policy throughout *Europe*, is the act paſſed in the 12th year of the reign of *Charles* II. A. D. 1660, entitled, *An act for the encouraging and increaſing of ſhipping and navigation:* uſually called the navigation act. It is of the utmoſt importance for all perſons concerned in commerce to be well acquainted with this act, for whatever alterations it may undergo, or whatever infringements may be made upon it by rebellion, or any other temporary or local cauſes, the principles of it muſt be as permanent as the maritime power of *Great Britain*, the maintenance of the latter, depending upon the former, for which reaſon it is here given in abſtract.

The Britiſh Navigation Act.

IT is enacted, that after the 1ſt of *December*, 1660, no goods or commodities whatſoever, ſhall be imported into, or exported out of, any of the *Engliſh* colonies, or that ſhould afterwards become ſo, in *Aſia*, *Africa*, or *America*, but in veſſels which do truly belong to the people of *England*, *Ireland*, *Wales*, or *Berwick upon Tweed*, and navigated with a maſter, and three-fourths of *Engliſh* ſailors, under the penalty of forfeiting ſhip and cargo.

2. No perſon born out of the allegiance of his majeſty, who is not naturalized or made a free denizen, ſhall, after the 1ſt of *February*, 1661, act as a merchant or factor in any of the ſaid places, upon pain of loſing all his goods and chattles, and of theſe cauſes the governors are obliged by oath to take cognizance and care.

3. No goods or commodities whatever, of the growth or manufacture of *Africa*, *Aſia*, and *America*, ſhall be imported into *England*, *Ireland*, *Wales*, Iſlands of *Guernſey* and *Jerſey*, or town of *Berwick upon Tweed*, in any other ſhips but thoſe belonging to the ſaid places, or to the plantations, and navigated in the manner aforeſaid, under penalty of forfeiting ſhip and cargo.

4. No goods or commodities of a foreign growth or manufacture ſhall be brought into *England*, *Ireland*, *Wales*, the Iſlands of *Guernſey* and *Jerſey*, or town of *Berwick upon Tweed*, in ſhips appertaining to his majeſty's ſubjects, but from the places of their manufactures and growths.

5. That all ſorts of ling, ſtockfiiſh, pilchards, cod, and herring, or any other kind of dryed or ſalted fiſh, uſually caught by the people of *England*, *Ireland*, *Wales*, or town of *Berwick upon Tweed*, or any fiſh-oil, or blubber, whale-fins, or whale-bones, not imported by ſhips belonging to the ſaid places, ſhall pay double aliens duties.

6. Henceforth it ſhall not be lawful for any veſſel, in which any ſtranger (not denizened or naturalized) is an owner, or that is not navigated by an *Engliſh* maſter, and three-fourths *Engliſh* ſailors, to load or carry any ſorts of goods or commodities from any port or creek of *England*, *Ireland*, *Wales*, Iſlands of *Guernſey* or *Jerſey*, or town of *Berwick upon Tweed*, to another port or creek, or any of them, under penalty of forfeiting ſhip and cargo.

7. That where any eaſe, abatement, or privilege is given in the book of rates, to goods or commodities imported or exported in *Engliſh* built ſhipping, it ſhall extend only to ſuch as are navigated with a maſter and three-fourths of the ſailors *Engliſh*, and, where it is required that they ſhall be ſo, the true intent and meaning is, that they be ſuch during the whole voyage, unleſs in caſe of ſickneſs, death, or being taken priſoners, to be proved by the oath of the maſter, or other chief officer.

8. No goods or commodities of the growth or manufacture of *Muſcovy*, or any of the dominions of the emperor thereof, or any ſorts of maſts, timber, or boards, foreign ſalt, pitch, tar, roſin, hemp or flax, raiſins, figs, prunes, olive oils, nor any ſort of corn or grain, ſugar, pot-aſhes, wines, vinegar, or ſpirits called *Aqua Vitæ*, or brandy, ſhall, after the 1ſt of *April*, 1661, be imported into *England*, *Ireland*, *Wales*, or town of *Berwick upon Tweed*, in any ſhips but ſuch as belong to the people thereof, and navigated as before mentioned; and that no currants, nor any other commodities, of the growth or manufacture of any part of the *Turkiſh* empire, ſhall, after the 1ſt of *September*, 1661, be imported into any of the aboveſaid places, in any but an *Engliſh* built ſhip, and navigated as aforeſaid, except only in ſuch foreign ſhips as are the built of that country or place, of which the goods are the growth or manufacture, or of ſuch port where the ſaid goods can only be, or moſt uſually are, firſt ſhipped for tranſportation, and whereof the maſter and three-fourths of the mariners, at leaſt, are of the ſaid country or place, under penalty of loſing ſhip and goods.

9. And, to prevent the great frauds daily uſed in colouring and concealing aliens goods, all wines of the growth of *France* or *Germany*, which, after the 20th of *October*, 1660, ſhall be imported into any of the ports or places aforeſaid, in any other ſhips than thoſe belonging to them, and navigated with the mariners thereof, ſhall be deemed aliens goods, and pay cuſtoms accordingly: And all ſorts of maſts, timber, or boards, as alſo all foreign ſalts, pitch, tar, roſin, hemp, flax, raiſins, figs, prunes, olive oils, all ſorts of corn or grain, ſugar, pot-aſhes, ſpirits commonly called brandy, or *Aqua Vitæ*, wines of the growth of Spain, the *Canaries*, *Portugal*, *Madeira*, or weſtern iſlands, and all the goods of the growth or manufacture of *Muſcovy*, or *Ruſſia*, which, after the 1ſt of *April*, 1661, ſhall be imported into any of the aforeſaid places, in any other than ſuch ſhipping, and ſo navigated; and all currants and *Turkey* commodities, which, after the 1ſt of *September*, 1661, ſhall be imported into any of the aforeſaid places, in any other than *Engliſh* built ſhipping, and navigated as aforeſaid, ſhall be deemed aliens goods, and pay accordingly.

10. And, for the prevention of all frauds in buying of foreign ſhips, it is enacted, that from the 1ſt of *April*, 1661, no foreign-built ſhip whatſoever ſhall be deemed an *Engliſh* ſhip, or enjoy the privilege of one, until ſuch time that he or they, claiming the ſaid ſhip, ſhall make appear by the chief officer of the cuſtoms, in the port next to the place of his or their abode, that he or they are not aliens, and ſhall have taken an oath (which the officer is hereby authorized to adminiſter) that ſuch ſhip was by him or them bought for a valuable conſideration, expreſſing the ſum, as alſo the time, place, and perſons from whom it was bought, and who are his part owners, if he has any; all which part owners ſhall be liable to take the ſaid oath before the chief officer of the cuſtom-houſe of the port next to the place of their abode; and that no foreigner directly or indirectly, hath any ſhare or intereſt therein; and upon ſuch oath, he or they ſhall receive a certificate under the hand and ſeal of the ſaid chief officer, that the ſaid ſhip may in future be deemed as a ſhip belonging to that port, and enjoy the privilege

privilege of ſuch a ſhip, and the officers ſhall keep a regiſter of all ſuch certificates as they ſhall give, and return a duplicate thereof to the chief officers of the cuſtoms at *London*, for ſuch as ſhall be granted in *England*, *Wales*, and *Berwick*, and to the chief officers of the cuſtoms at *Dublin*, for ſuch as ſhall be given in *Ireland*, together with the names of the perſons from whom ſuch ſhip was bought, and the ſum of money which was paid for her, as alſo the names of all ſuch who are part owners of her, if any ſuch be.

11. It is likewiſe enacted, that if any officer of the cuſtoms, ſhall, after the ſaid 1ſt of *April*, allow the privilege of an *Engliſh* built ſhip to any foreign built one, until ſuch certificate be produced, or oath taken, and until examination be made whether the maſter and three-fourths of the ſailors be *Engliſh*, or ſhall allow the privileges given by this act to any foreign built ſhip bringing in the commodities of the growth of the country where it was built, until examination and proof, whether it be a ſhip of the built of that country, and that the maſter and three-fourths of the mariners are of that country; or if any governors of any of the plantations ſhall ſuffer any foreign built ſhip to load or unload any commodities or goods within the precincts of their government, until ſuch certificates ſhall be produced to them, or thoſe appointed by them, and examination is made whether the maſter and three-fourths of the mariners be *Engliſh*, ſuch officer of the cuſtoms, or ſuch governors ſhall be diſplaced for their offence.

12. It is however provided, that this act, nor any thing herein contained, extend not, or be meant to reſtrain and prohibit the importation of any of the commodities of the *Streights* or *Levant* ſeas, loaden in *Engliſh* built ſhipping, and whereof the maſter and three-fourths of the mariners be *Engliſh*, from the uſual ports or places for lading of them heretofore, within the ſaid *Streights* or *Levant* ſeas, though the ſaid commodities be not of the growth of the ſaid places.

13. Provided alſo, that this act, or any thing therein contained, extend not to reſtrain the importing of any *Eaſt-India* commodities, loaden in *Engliſh* built ſhipping, and whereof the maſter and three-fourths of the mariners are *Engliſh*, from the uſual places for lading of them in any part of thoſe ſeas to the ſouthward and eaſtward of the *Cape of Good Hope*, although the ſaid ports be not the very places of their growth.

14. And it is likewiſe provided, that it ſhall be lawful for any of the people of *England*, *Ireland*, *Wales*, Iſlands of *Guernſey* or *Jerſey*, or *Berwick upon Tweed*, in their ſhips, navigated with a maſter and three-fourths *Engliſh* ſailors, to bring in from any of the ports of *Spain*, *Portugal*, the *Azores*, *Madeira*, or the *Canary* iſlands, all ſorts of goods or commodities of the growth or manufacture of either of them.

15. Provided always, that this act extend not to bullion, nor yet to any goods taken by way of repriſal by any *Engliſh* ſhip, navigated as before-mentioned, and with his majeſty's commiſſion.

16. Nothing in this act ſhall extend to lay aliens duties upon any corn of the growth of *Scotland*, or any ſalt made there, or any fiſh caught and cured by the people of that kingdom, and imported directly from thence in *Scotch* built veſſels, and ſailed with a maſter and three-fourths of the mariners of his majeſty's ſubjects, nor to any ſeal oil of *Ruſſia*, imported from thence into *England*, *Ireland*, *Wales*, or *Berwick upon Tweed*, in ſhipping thereunto belonging, and navigated as aforeſaid.

17. And it is hereby enacted, that every veſſel belonging to any ſubject of the *French* king, which after the 20th of *October*, 1660, ſhall come into any port, creek, &c. of *England*, *Ireland*, *Wales*, or *Berwick upon Tweed*, and ſhall there lade or unlade any goods or commodities, or take in, or ſet on ſhore, any paſſengers, ſhall pay to the collector of his majeſty's cuſtoms in ſuch port, &c. for every ton of the ſhip's burthen, to be computed by the officer thereunto appointed, the ſum of five ſhillings, of current money of *England*; and that no ſuch ſhip be ſuffered to depart out of ſuch port, &c. until the ſaid duty be fully paid; and that this duty ſhall continue to be collected for ſuch time, as a certain duty, fifty ſols *per* ton, lately impoſed by the *French* king, or any part thereof, ſhall continue to be collected upon the ſhipping of *England* lading in *France*, and three months after, and no longer.

18. And it is farther enacted, that after the 1ſt of *April*, 1661, no ſugars, tobacco, cotton, wool, indigo, ginger, fuſtick, or other dying wood, of the growth or manufacture

facture of any *Engliſh* plantations in *America*, *Aſia*, or *Africa*, ſhall be carried from any of the ſaid *Engliſh* plantations to any place whatſoever, other than to ſuch other *Engliſh* plantations as do belong to his majeſty or to the kingdom of *England*, *Ireland*, *Wales*, or *Berwick upon Tweed*, there to be laid on ſhore, under the penalty of forfeiting ſhip and goods.

19. And for every ſhip, which after the 25th of *December*, 1660, ſhall ſet out from *England*, *Ireland*, *Wales*, or *Berwick upon Tweed*, for any *Engliſh* plantation in *America*, *Aſia*, or *Africa*, ſufficient bond ſhall be given, with one ſurety to the chief officers of the cuſtom-houſe of ſuch port from whence the ſaid ſhip ſhall ſail, to the value of one thouſand pounds, if the ſaid ſhip be of leſs burthen than one hundred tons, and of two thouſand pounds, if the ſhip ſhall be of greater burthen; that in caſe the ſaid ſhip ſhall load any of the ſaid commodities at any of the ſaid *Engliſh* plantations, that the ſame commodities ſhall be brought by the ſaid ſhip to ſome port of *England*, *Ireland*, *Wales*, or to the port of *Berwick upon Tweed*, and ſhall there put on ſhore the ſame, the danger of the ſeas only excepted: And for all ſhips coming from any other port or place to any of the aforeſaid plantations, which by this act are permitted to trade there, that the governor of ſuch *Engliſh* plantations ſhall, before the ſaid ſhip be permitted to load any of the ſaid commodities, take bond in the manner and to the value aforeſaid, for each reſpective ſhip, that ſuch ſhip ſhall carry all the aforeſaid goods that ſhall be laden on board to ſome other of his majeſty's *Engliſh* plantations, or to *England*, *Ireland*, *Wales*, or *Berwick upon Tweed*: and that every ſhip which ſhall load any of the aforeſaid goods, until ſuch bond be given to the governor, or certificate produced from the officers of any cuſtom-houſe in *England*, &c. that ſuch bonds have been there duly given, ſhall be forfeited; and the ſaid governors ſhall twice in every year, after the 1ſt of *January*, 1660, return true copies of all ſuch bonds to the chief officer of the cuſtoms in *London*.

In treating of maritime affairs, the owners of ſhips are the firſt who naturally challenge our regard, and they become ſuch either by building or purchaſing their veſſels; and this, either in partnerſhip or alone; and if the former, and the property is diſtributed among ſeveral, the major part of them may let the ſhip out to freight againſt the conſent, though not without the privity of the minor.

Thirty ſeven part owners of a ſhip would ſend her a voyage, but two or three of the other part-owners would not conſent. Upon which the admiralty took ſtipulation in nature of a recognizance of the thirty ſeven for ſecurity for the ſafe bringing back of the ſhip. The ſhip being loſt, the two or three part-owners, who oppoſed the voyage, libelled upon this ſtipulation againſt the thirty ſeven, upon which they moved for a prohibition, but it was denied; for *per curiam*, though by the law of *England* two or three part-owners may hinder the others from ſending the ſhip a voyage without their conſent, yet the law of the admiralty is otherwiſe; for there, for the encouragement of navigation, the court of admiralty will permit the ſhip to make the voyage, upon ſecurity given to bring her back ſafe; for it is reaſonable that the others ſhould have ſome ſecurity for their ſhip. Then, if the ſhip be loſt, it is at the peril of the adventurers, and they ſhall be ſuable upon their ſtipulation by the others in the admiralty; for now it is not doubted but the admiralty may take ſtipulation. *Blacket* againſt *Anſty*. Raymond 235. Trinity term 9 Will. III.

An owner letting his ſhip to another for a voyage, for a certain ſum, and agreeing that the perſon hiring the veſſel ſhall have the benefit of the freight of goods, is not thereby diſcharged from reſponſibility for the loſs of goods, as was adjudged in the caſe of *Pariſh* againſt *Crawford*. *Crawford* the ſole owner had let his ſhip to *Fletcher*; *Pariſh* ſhipped a number of *Moidores* and had bills of lading from *Fletcher*, part of the money was not delivered according to the conſignment. And judgment was given againſt *Crawford*. Hill. term 19 *Geo.* II. *Strange's Reports*, 1251.

In caſe a ſhip be taken away from the owners, or they be otherwiſe diſpoſſeſſed, it is provided, both by the common and maritime laws of this realm, that they maintain an action of trover and converſion for an eighth, ſixteenth, or any other part or ſhare of the ſame; and in action on the caſe, the plaintiff declared, that he was owner of the ſixteenth part of a ſhip, and the defendant owner of another ſixteenth part of the ſame ſhip, and that the defendant fraudulently and deceitfully carried the ſaid ſhip *ad Loca tranſmarina* (into a foreign part) and diſpoſed of her to his own uſe, by which the plain-

tiff

[illegible] loſt his ſixteenth part to his damage: On not guilty pleaded, and verdict for the [illegible]ff, it was moved in arreſt of judgment, that the action did not lie; for, though [illegible] found deceptive, yet this did not help it, if the action did not lie on the ſubject [illegible]; and here they are tenants in common of the ſhip, and by *Littleton*, between [illegible]nts in common there is not any remedy, and there cannot be any fraud between [illegible] becauſe the law ſuppoſes a truſt and confidence betwixt them, and upon theſe [illegible]ns judgment was given *quod Querens nil capiat per Billam*. *Lit. S.* 323. 1 Inſt. 199. [illegible]es a *Sawcer*, *Ray*. 15. 1 *Levinz*. 29. 1 *Keeble* 38. 33. *Bennington* adver. *Benning-*[illegible].

Owners are not bound to continue their paction or partnerſhip longer than they pleaſe, for though by the law marine it was required, that a new built ſhip ſhould make one voyage upon the common riſk, before the owners ſhould be allowed to ſepa-rate, yet by the law of *England* any owner may ſell or transfer his right at what time he pleaſes. *Molloy* de jur. Mar. page 222. S. 3.

But, if any one obſtinately refuſes his conſent to a voyage, the law will force him either to hold or ſell his ſhare: But, if he will ſet no price, the reſt may fit the ſhip out at their own coſt and charges, and whatſoever freight ſhe earns ſhall be ſolely theirs, and no part thereof be given to the diſſenting owner, but if the ſhip ſhould miſcarry, or be caſt away, the reſt muſt make him ſatisfaction for the part he held.

But, on the contrary, if the greateſt part of the owners refuſe to fit out the veſſel, they ſhall not be compelled, on account of the majority, but in this caſe, the ſhip ſhall be valued and ſold, and the like where part of the owners become deficient and unable to fit her out.

Owners of ſhips are liable for the actions of the maſters they employ, therefore it behoves them carefully to conſult as well the honeſty as ability of him they intend to commit the care of their intereſts to, as the charge both of the veſſel and its lading reſts on him; and the owners are obliged, both by the common laws of *England* and the law-marine, to make ſatisfaction for all damages that ſhall accrue through the maſter's neglect, and were formerly obliged to make good the contents of a bill of loading ſigned by the maſter, provided he abſconded, though the ſaid bill of loading might be iniquitouſly obtained; as I remember to have occurred with a merchant, who had a ſhip of his own from *Liſbon*, and was arreſted, I think, in fifteen actions for money his maſter had ſigned bills of loading for, and had run away with, and which he might have continued coining, and firmed new bills every day to the utter ruin of his owner, though never ſo wealthy, had not the act 7 *Geo.* II. Cap. 15. Sect. 1. prevented ſuch fraudulent proceedings, by limiting the owners loſs to ſhip and freight, ſo that he now knows the extent of what damage a roguiſh maſter can do him, which was before un-certained and endleſs.

On the other hand, if the maſter commits offences, either negligently or wilfully, he ſhall be reſponſible to his owners for the reparation of damages, and they are not bound to ſue jointly, but may do it ſeparately, both according to the common and ma-rine law; as alſo in caſe the ſhip hath by freight got ſomething clear to divide, and the maſter hath paid ſome of the owners their parts, the reſt may bring their action for their ſhares without joining with the others. But the owners muſt be reſponſible to the freighters, as in the following caſe. Stanley. v. Ayler 3. Keeble 444.

The defendant and ſeven other perſons were proprietors of a ſhip, which uſually carried goods on freight between *Topſham* and *London*, and the plaintiff loaded goods upon her at the latter, to be carried to the former port; but the defendant, not careful of his duty, had ſo careleſsly ſtowed the ſaid goods, that though the ſhip arrived ſafe at *Topſham*, yet the goods were all ſpoiled. And upon *Non Culp.* pleaded, the jury found a ſpecial verdict, *viz.* that the defendant, and ſeven other perſons were proprietors and part owners of the ſhip; that the ſhip had a maſter *Locat'* in her by the part-own-ers, who had ſixty pounds wages for every voyage between *Topſham* and *London*, that the goods were delivered to the maſter, none of the part owners being preſent, and that there was not any contract made with them, or any of them by the plaintiff, that the ſhip arrived ſafe at *Topſham*, but the goods were ſpoiled. *Et ſi pro Quer', pro Quer'; non, pro Def.*

And

And two points were made:

1ſt. If the proprietors are chargeable, no contract being made with them, and there being a maſter that is chargeable in reſpect of his wages, according to the caſe of *Morſe* and *Slue*; yet *per Holt, C. J.* clearly, that though the maſter be chargeable in reſpect of his wages, ſo are the proprietors in reſpect of their freight, that they receive for the carriage of their goods at the election of the plaintiff.

2dly. If the action lay againſt the defendant alone, it appearing that there are other part-owners, not made defendants; and held that the action did not lie againſt him ſole, but ought to have been againſt all the part-owners; for all the part-owners are chargeable in reſpect of the profit they make by the carriage of the goods, and that in point of contract, upon their undertaking, be it implied or expreſs, and are not chargeable as treſpaſſers, for then one might be chargeable alone, but in point of contract, upon their receipt of the goods to be carried for hire. Judgment pro Def. as by 3 Mod. 321. *Boſon con. Sand.* 3. *Levinz.* 258. where it is with a *Cur. Adviſare, mes le Reporter ut audivit Judg. pro. Defen.*

If a ſhip be broken up or taken in pieces with an intent to convert the ſame to other uſes, and afterwards on change of mind ſhe be rebuilt with the ſame materials, ſhe is now another, and not the ſame ſhip, eſpecially if the keel be ript up, or changed, and the whole ſhip be all once taken aſunder and rebuilt, there determines the partnerſhip, *quoad* the ſhip; but if a ſhip be ripped up in parts, and taken aſunder in parts, and repaired in parts, yet ſhe remains ſtill the ſame veſſel, and not another; nay, though ſhe hath been ſo often repaired that there remains not one ſtick of the original fabrick. Molloy de jur. Mar. p. 224. Sect. 6.

If a man repairs his ſhip with plank or other materials not his own, but appertaining to another, yet the property is not hereby altered, but the ſhip maintains and keeps her firſt owners. Though if a man take plank and materials prepared for the uſe of ſhipping, and belonging to another, the property of the veſſel follows the owner of the materials, and not the builder; but, if a man cut down the trees of another, or takes timber or planks prepared for the erecting or repairing of a dwelling-houſe, nay though ſome of them were for ſhipping, and builds a ſhip, the property follows not the owners but the builders. Molloy de jur. Mar. p. 224. S. 7.

If a ſhip is under repair in a dock belonging to the ſhipwright who is ordered by the owner to repair her, and a fire happens, not through the negligence of the ſhipwright, but by accident, and deſtroys the ſhip before the repairs are completed; the ſhipwright ſhall be paid his charges for the repairs. As was adjudged by the court of *King's Bench* in the caſe of *Minetons* againſt *Athaws*. 3. *Burrow's Report*, 1592. *Michaelmas term*, 5 *Geo.* III.

The repairer of a ſhip has his election to ſue the maſter who employs him, or the owners, but if he undertakes it on a ſpecial promiſe from either, the other is diſcharged. *Gamham* againſt *Bennet* ſtrange 761. 13 Geo. I.

The words which were uſually made uſe of formerly in the ſale of ſhips, *viz.* the tackle, furniture, apparel, and all other inſtruments thereunto belonging, did not convey the ſhip's boat, which, if unexpreſſed in the ſale, remained ſtill in the owners, as ſhe does, if a ſhip is forfeited for committing piracy. Molloy de jur. Mar. p. 224. Sect. 8. Rolls Abridg. 530.

Though ballaſt is generally uſed in ſhipping, where a veſſel goes out empty, or filled with light goods, yet it is not eſteemed any part of her furniture; and ſo it was adjudged in debt on bond; of which the condition was, that whereas the plaintiff had bought of the defendant a ſhip, if the plaintiff ſhall enjoy the ſaid ſhip with all the furniture belonging to the ſame, without being diſturbed for the ſhip, or any furniture appertaining to it, that then, &c. and the caſe was, after the ſale of the ſhip, a ſtranger ſued the plaintiff for certain monies due for ballaſt bought by the defendant for the ſame ſhip, in which ſuit he obtained ſentence, upon which the ſhip was ſeized. The queſtion was whether ballaſt be furniture for a ſhip or not, and it was reſolved in the negative; for although it may ſometimes be as neceſſary as ſails, yet it is not always ſo, as ſhips frequently ſail without it, more eſpecially when a heavy loading anſwers the purpoſe by ſupplying its place. *Linter's* caſe. Leon. 46, 47.

If a ſhip commits a piracy, and is thereby become forfeited, but before ſeizure ſhe be *bonâ fide* ſold, the property ſhall not be queſtioned, nor the owners diveſted of the ſame. *Bingley's* caſe. Rolls Abridg. fol. 530.

And

And if a mortgagee of ſhips, by deed, entruſts the mortgager with the original bill of ſale; and the mortgager indorſes thereon ſubſequent mortgages, or bills of ſale of ſeveral parts of the ſhip, the firſt mortgagee acquieſces, he ſhall be poſtponed. 1 *Peer Will.* 393, 394.

Upon an information *tam quam*, grounded upon the act of navigation for importing goods in a foreign veſſel contrary to that act, the queſtion was, whether or not, if a foreign ſhip naturalized by the new act, being a prize taken in the late war with *Holland*, be afterwards ſold to a foreigner, who ſells her again to an *Engliſhman*, whether or no the oath muſt be taken again, according to the act; *per Cur.* it need not, becauſe the ſhip was once lawfully naturalized. *Hardres*, 511. *Martin v. Verdne. Molloy de jure Mar.* page 227, 228. Sect. 15.

An agent for the *Eaſt India* company, in the *Eaſt Indies*, bought a ſhip and cargo of the commander, who had no right or power to ſell either, and the owner on a ſuit here had the value decreed him for ſhip and cargo, the value being found by a jury, with *Indian* intereſt, *viz.* 12 *per cent.* 1 *Peer Will.* 226. 395.

If a man get poſſeſſion of a ſhip, without a juſt title to the ſame, he ſhall, by the law marine, anſwer for ſuch profit, as the ſhip, in all probability might have earned: and the reaſon of that is, becauſe the only end of ſhipping is the employment thereof; but if a warrant be directed out of the admiralty to the marſhal to arreſt ſuch a ſhip, and *Salvo Cuſtodire* (preſerve her in ſafety) who by force of the ſame enters into the ſhip; though the warrant does not mention that the officer ſhould carry away her ſails, yet he may juſtify the taking of them, for that he cannot *Salvo Cuſtodire* her, unleſs he takes away the ſails. *Peer Will.* 395. Dig. lib. 6. tit. 1. 62. & Lib. 7. tit. 1. 12. 1. Creamer v. Jockley Latch. fol. 880.

In caſe a ſhip is freighted out, and in conſequence of the agreement receives her lading aboard, if an embargo happens afterwards, and her cargo is taken as forfeited, yet the owners ſhall notwithſtanding receive the freight, as the fault was not in them, but in him whoſe property the goods were. Dig. lib. 19. tit. 2. 61.

In the main ſea, or in an arm of it, a ſhip may not become a deodand, though any body be drowned out of it, or otherwiſe come by their death aboard, becauſe on ſuch waters ſhips are naturally expoſed to the dangers of tempeſtuous weather; but a ſhip or veſſel in freſh water may become a deodand, as happened with one lying at *Rotherhithe*, near the ſhore, to be careened, where a ſhipwright being at work under her at low-water, as ſhe leaned aſide, ſhe unexpectedly turned over, and unfortunately killed him. Upon a trial at bar, the queſtion was, whether ſhe belonged to the lord of the manor contiguous to the place where the man was ſlain, or to the almoner, as a matter not granted out of the crown; and it was reſolved that the ſhip was a deodand, and the jury found a verdict for the lord of the manor. 3. Inſt. fol. 58. Mich. 29 *Car.* II. B. R.

If a ſhip imports prohibited goods ſhe cannot be ſeized as forfeit till there is a condemnation in the exchequer thereon. 1 Vent. 47. 1 Sed. 421. 1 Mod. 18. 2 Keeb. 94. Horne a Irve. 12 *Will.* III. Cap. 11. S. 1. 2 *Edw.* VI. Cap. 37. Sect. 5.

If foreign brandy or ſpirits ſhall be imported in any ſhip under fifteen tons, except for the uſe of the ſeamen, not exceeding one gallon each, ſuch brandy, &c. ſhall be forfeited.

If any maſter, owner, purſer, or boatſwain of any ſhip willingly permit any braſs, copper, latten, bell-metal, pan-metal, gun-metal, or ſhrof-metal, whether it be clear or mixed, tin and lead excepted, to be ſhipped contrary to this act, or perceiving ſuch metal to be ſhipped, do not diſcloſe the ſame in three days after knowledge had to the cuſtomer or comptroller of the port, or their deputies, every ſuch owner, &c. ſhall forfeit double the value of the metal.

Every veſſel, with all her tackle, in which any great cattle, ſheep, or ſwine, or any beef, pork, or bacon, except for the neceſſary proviſions of the ſhips, in which the ſame ſhall be brought, not expoſing it to ſale, ſhall be imported, and out of which they ſhall be put on ſhore, ſhall be forfeited; and it ſhall be lawful for any perſon, within one year after ſuch importation, to ſeize the veſſel, and make ſale thereof to the beſt advantage, &c. and it ſhall be lawful for any juſtice of peace of the county, or chief officer of the port town, where ſuch importation ſhall be, or where any of the cattle, beef, &c. ſo imported ſhall be brought, by warrant to cauſe to be apprehended the

maſter

maſter and ſeamen, having charge of, or belonging to, ſuch veſſel; and every other perſon employed in the landing, or taking care of the ſaid cattle, beef, &c. and them to commit to the common goal for three months. 20 *Car.* II. Cap. 7. S. 5.

Salted beef, pork, bacon, butter and cattle, the laws permitting the importation from *Ireland* into *Great-Britain*, duty-free, are made perpetual. 16 Geo. III. c. 8.

The importation of tallow, hog's-lard, and greaſe, is made duty-free, till the 25th *March*, 1782, from any place. Continued to 1789. 26 *Geo.* III. c. 53. 19 Geo. III. c. 22.

It ſhall be lawful for any perſons who ſhall reſide in her majeſty's dominions to import cochineal in ſhips belonging to any ſtate in amity; and in *Spaniſh* ſhips, or ſuch as are deemed *Spaniſh* ſhips, ſailing with *Spaniſh* paſſes and colours, from *Cadiz*, *Seville*, *Port St. Mary*, *St. Lucar*, and *Gibraltar*, or any other ports in *Spain*, during the war, &c. the act 12 *Car.* II. cap. 18. notwithſtanding. 6 *Ann.* Cap. 33.

Made perpetual 12 *Ann.* Stat. 1. Cap. 18. Sect. 3.

No perſon ſhall buy any rough hide or calf-ſkin in the hair, but only ſuch as ſhall tan them, except ſalt hides for the uſe of ſhips, &c. 1 *Jacob* I. Cap. 22. Sect. 7.

Raw hides of ſteers, cows, or any other cattle, except horſes, mares, or geldings, and calves ſkins or goat ſkins, raw or undreſſed, may be imported, duty-free, from *Ireland* into *Great-Britain*. 14 Geo. III. c. 86.

No maſter ſhall looſe his ſhip for any ſmall thing, not cuſtomed, put in the ſhip without his knowledge. 38 *Edw.* III. Cap. 8.

No cuſtomer or comptroller ſhall have ſhips of their own, nor meddle with the freight of ſhips. 14 *Rich.* II. Cap. 10.

No ſhip or goods ſhall be ſeized as forfeited for unlawful importation or exportation, or for non-payment of cuſtoms, but by the perſons appointed to manage the cuſtoms, or officers of cuſtom, or perſons deputed by warrant from the lord-treaſurer, or under-treaſurer, or by commiſſion from his majeſty under the great or privy-ſeal, and if any ſeizure ſhall be made by any other perſon for the cauſes aforeſaid, ſuch ſeizure ſhall be void. 13 and 14 *Car.* II. Cap. 11. Sect. 15.

In caſe the ſeizure or information ſhall be made upon the act of navigation, the defendants ſhall, on their requeſt, have a commiſſion out of Chancery to examine witneſſes beyond ſea, and have a competent time allowed for the return thereof before trial; and the examination of witneſſes ſo returned ſhall be evidence at the trial. Ditto, Sect. 29.

Every perſon who ſhall export goods from any port of this kingdom, capable of a ſhip of two hundred tons, upon an ordinary full ſea, to any part of the *Mediterranean* beyond the port of *Malaga*, or import goods from the places aforeſaid, in any ſhip that hath not two decks, and do carry leſs than ſixteen pieces of ordnance mounted, with two men for each gun, and other ammunition proportionable, ſhall pay for all merchandizes ſo exported or imported one *per cent.* above the tonnage and poundage. Ditto, Sect. 35.

It ſhall be lawful to export fiſh into any of the ports of the *Mediterranean* in any *Engliſh* ſhip, provided one moiety of her lading be fiſh, and to import merchandize in the ſame ſhip for that voyage, without paying any other rates than accuſtomed. Ditto, Sect. 36.

The maſter of every ſhip, carrying certificate goods to *Ireland*, ſhall take from the collector in *Great-Britain* a duplicate of his contents, under the hand and ſeal of the collector and comptroller, which they are required to deliver without fee, and ſuch maſter ſhall deliver ſuch duplicate to the officers of the cuſtoms in *Ireland* before he be permitted to land ſuch goods. 8 *Ann.* Cap. 13. Sect. 19.

In caſe any foreign goods ſhall, by any collier, fiſher-boat, or other coaſting veſſel, be taken in at ſea, or out of any veſſel, to be landed, or put into any other ſhip, &c. within the limits of any port, without payment of the duties, ſuch goods ſhall be forfeited, and the maſter of ſuch collier, &c. ſhall forfeit treble the value, unleſs in caſe of neceſſity, of which ſuch maſter ſhall give notice, and make proof before the chief officers of the cuſtoms of the firſt port where he ſhall arrive; the maſter or other perſon taking charge of the ſhip out of which ſuch goods ſhall be taken in at ſea, ſhall forfeit treble the value. 5 *Geo.* I. Cap. 2. Sect. 3.

Where any veſſel of fifty tons, or under, laden with cuſtomable, or prohibited goods, ſhall be found hovering on the coaſts, within the limits of any port, and not proceeding on her voyage, wind and weather permitting, any officer of the cuſtoms may go on board, and take an account of the lading, and demand ſecurity of the maſter, &c. by his own bond, to his majeſty, &c. in treble the value of the foreign goods on board, with condition, that ſuch veſſel (as ſoon as wind and weather, and the ſtate of ſuch veſſel doth permit) ſhall proceed on her voyage, and ſhall land ſuch goods in ſome foreign port. And if ſuch maſter, &c. ſhall refuſe to enter into ſuch bond, or ſhall not proceed on ſuch voyage, as ſoon as wind, weather, and the ſtate of ſuch ſhip, will permit, unleſs ſuffered to make longer ſtay by the collector, or other chief officer, not exceeding twenty days, all the foreign goods on board ſuch veſſel may, by any officer of the cuſtoms by direction of the collector, or other principal officer, be taken out of the ſhip and ſecured; and, if ſuch goods are cuſtomable, the duties ſhall be paid; and wool, or any prohibited goods, found on board, are declared ſubject to forfeiture *. 7 *Geo.* I. Cap. 2. Sect. 8.

All goods found concealed on board any ſhip after the maſter ſhall have made his report at the cuſtom-houſe, and not mentioned in the ſaid report, ſhall be forfeited, and may be ſeized and proſecuted by any officer of the cuſtoms, and the maſter of ſuch ſhip, in caſe he was privy to ſuch concealment, ſhall forfeit treble the value of the goods. 9 *Geo.* II. Cap. 35. Sect. 27.

It ſhall be lawful for the officers of exciſe to go on board any veſſel within the limits of any port, and to continue on board, and rummage in like manner as the officers of the cuſtoms, for arrack, rum, brandy, or other exciſeable liquors; and for coffee, tea, cocoa-nuts, chocolate, and cocoa-paſte; and to ſeize for his majeſty's uſe all ſuch of the ſaid commodities there found, as by law ſhall be forfeited, together with the package; and to ſeize ſuch of the ſaid commodities, as before due entry, and without paying or ſecuring the duties on the importation, ſhall be found unſhipping or unſhipped. 1 *Geo.* I. Cap. 30. Sect. 1.

For encouragement of the *North-Sea*, *Iſland* and *Weſtmony* fiſheries, no freſh herring, freſh cod, or haddock, coal fiſh, or gull fiſh, ſhall be imported but in *Engliſh* built ſhips, and having certificate as in the act, and whereof the maſter and three-fourths are *Engliſh*, and which have been caught in ſuch ſhips, and not bought of ſtrangers, under pain of forfeiture of all ſuch fiſh, and the ſhip in which it was imported. 15 *Car.* II. Cap. 7. S. 16.

No *Britiſh* ſhip, trading to any part of the *Mediterranean* ſea beyond *Malaga*, ſhall be entitled to the exemption granted in the act 13 and 14 *Car.* II. Cap. 11. Sect. 36. herein before recited, for that one moiety of the loading of ſuch ſhip ſhall conſiſt of fiſh unleſs ſuch moiety conſiſts of fiſh taken and cured by his majeſty's ſubjects. 9 *Geo.* II. Cap. 33. S. 3.

It ſhall be lawful for natives of *England* or *Ireland* to import into *England* directly from *Ireland* any ſorts of hemp or flax, and all the productions thereof, as thread, yarn, and any manufacture thereof, of the growth and manufacture of *Ireland*, free from all duties, the maſter of the veſſel importing the ſame bringing a certificate from the chief officer of the port in *Ireland* expreſſing the marks, number, tale, or weight, of the ſpecies in each bale, mentioned in the bills of lading, with the names and places of abode of the exporters from *Ireland*, and of ſuch perſons that ſhall have ſworn the goods to be of the growth and manufacture of that kingdom, and where, and to whom in *England* conſigned; and the maſter of the ſhip, on arrival in *England*, making oath that the ſaid bales and goods are the bales and goods taken on board by virtue of the ſaid certificates. 7 and 8 *Will.* III. Cap. 39. Sect. 1. 16 *Geo.* II. c. 26.

All linen made in *Ireland*, and imported into *Great-Britain*, may be again exported to any *Britiſh* plantation in *America*, without payment of any duty whatſoever. 3 *Geo.* I. Cap. 21.

To encourage the importation of rough and undreſſed hemp or flax from the *Britiſh* colonies in *America*; for hemp, water rotted, bright and clean, or rough undreſſed flax,

* *N. B. There is the ſame Act made for any Ship hovering on the Coaſt of* Ireland, &c. by 6 *George* I. Cap. 1. Sect. 6.

ſo imported, the following bounties are to be given by the collector of the cuſtoms at the port of importation: between *June* 24, 1764, and *June* 24, 1771, 8l. *per* ton; between *June* 24, 1771, and *June* 24, 1778, 6l. *per* ton; and between *June* 24, 1778, and *June* 24, 1785, 4l. *per* ton. 4 *Geo.* III. Cap. 26. Sect. 1.

Grants the following bounties on hemp, the growth of *Ireland*, imported from thence into *Great Britain*. From *June* 24, 1779, to ditto, 1786, 8l. *per* ton. From *June* 24, 1786, to ditto, 1793, 6l. *per* ton. From *June* 24, 1793, to ditto, 1800, 4l. *per* ton. 19 *Geo.* III. 3. c. 37.

Any maſter or owner of a veſſel, fraudulently importing foreign hemp or flax to obtain theſe bounties, incurs the forfeiture of 100l. and the veſſel, with all her furniture, ſhall alſo be forfeited. Ditto, Sect. 11.

Grant an additional bounty of 5s. *per* hogſhead upon flax ſeed imported into *Ireland*, for which a bounty is allowed in that kingdom, by acts made there in the third and ſixteenth of his preſent majeſty. Rape ſeed, and rape cakes, may be imported from *Ireland* into *Great-Britain*, duty free. 15 *Geo.* III. c. 45. 16 *Geo.* III. c. 41. 15 *Geo.* III. c. 34.

Cotton yarn, the manufacture of *Ireland*, may be imported into *Great-Britain*, duty free. 18 *Geo.* III. c. 56.

Tea exported to *Ireland*, as merchandiſe, to draw back the whole cuſtoms, ſubject to the regulations preſcribed by 12 *Geo.* III. c. 60. and 16 *Geo.* III. c. 51. 17 *Geo.* III. c. 27.

Repeals the act of 19 of *Henry* VII. prohibiting the exportation of gold and ſilver coin from *Great-Britain* to *Ireland*, and allows the ſaid exportation. 20 *Geo.* III. c. 10. Sect. 1.

Repeals the act of 9 *Anne*, prohibiting the importation of foreign hops into *Ireland*, and allows them to be imported there. Sect. 2.

Alſo, the act 6 *Geo.* I. c. 11. which enacts that no draw-back ſhall be allowed on the exportation of hops from *Great-Britain* to *Ireland*, and allows the draw-backs to be paid for hops, whether of foreign or *Britiſh* growth.

Repeals ſo much of an act of 26 *Geo.* II. as confines the Levant trade to ſubjects of *Great-Britain* only, admitted members of the *Turkey* company; and enacts, that the ſubjects of *Ireland*, on requeſt, ſhall be admitted members of the ſaid *Turkey* company, and being ſo admitted, may export directly from *Ireland* to the *Levant* ſeas, or import from thence into *Ireland*, ſuch commodities as are allowed to be imported into *Great-Britain* from the ſaid ſeas; or to be exported to the ſame, by any perſon free of the *Turkey* company. Sect. 3.

Allows any perſons, free of the *Turkey* company, to import into *Great-Britain* or *Ireland*, any goods or commodities which have hitherto been uſually imported from *Turkey* or *Egypt*, or from any place within the dominions of the grand ſeignor, not only in ſhips built in, and belonging to, *Great-Britain* or *Ireland*, but in any ſhip or veſſel belonging to any kingdom or ſtate in amity with his majeſty, his heirs, and ſucceſſors, navigated by foreign ſeamen, from any port or place whatſoever, upon payment of the ſame duties if imported into *Great-Britain*, as the like goods would be ſubject to if imported in *Britiſh* ſhips directly from the place of their growth, production, or manufacture; the goods ſo imported in foreign-built ſhips to be liable to the aliens duties, if ſuch goods were ſubject thereto before the paſſing of this act. 20 *Geo.* III. c. 45.

No entry to be allowed to be made of any ſuch goods at the cuſtom-houſe till certificate is produced by the importer, that he is free of the *Turkey* company.

After *January* 1, 1780, goods uſually imported from the *Mediterranean* may be imported from any port or place whatever, by any perſons whatſoever, into *Great-Britain* or *Ireland*, in *Britiſh* built ſhips, or in ſhips belonging to any kingdom or ſtate in amity with his majeſty, his heirs, and ſucceſſors, upon payment of the ſame duties, if imported into *Great-Britain*, as they would have been liable to if imported directly from the places of their growth, &c. except drugs, which, if not imported by perſons free of the *Turkey* company, ſhall be liable to the ſame duties as if not imported from the place of their growth. The goods ſo imported from the *Mediterranean* in foreign ſhips to be liable to aliens duties, if they were ſo before, notwithſtanding this act.

Cotton

Cotton or cotton wool imported into *Great Britain* after the 1ſt of *Jan.* 1780, in foreign ſhips, to be ſubject to a duty of one *penny farthing* on every pound weight, and alſo to the additional duty of five *per cent.* on the amount of the ſaid duty, as granted by the Act of 19 *Geo.* III. And no draw-back is to be allowed on the re-exportation of the ſaid cotton or cotton wool. The produce of the ſaid duty of one penny farthing *per* pound weight is to be paid from time to time into the receipt of the Exchequer, and is to be kept ſeparate and apart as a fund for the encouragement of the growth of cotton in his majeſty's *Leeward* iſlands, and for the encouraging the importation ther of into *Great-Britain*, in ſuch way and manner as Parliament ſhall hereafter direct.

No commodity of the product or manufacture of the *Eaſt-Indies*, ſhall be imported into *Ireland*, the iſlands of *Jerſey*, *Guernſey*, *Alderney*, *Sark*, or *Man*, or to any of the plantations in *Africa* or *America*, belonging to the crown of *Great-Britain*, but ſuch only as ſhall be ſhipped in *Great-Britain* in ſhips navigated according to law, on penalty of forfeiting all ſuch goods, or the value thereof, together with the ſhip, &c. 7 *Geo.* I. Cap. 11. Sect. 40.

It ſhall be lawful for natives of *England* or *Ireland* to ſhip, in any port of *Ireland*, in *Engliſh* built ſhipping, whereof the maſter and three-fourths of the mariners be *Engliſh* or *Iriſh*, any white or brown linen-cloth, of the manufacture of *Ireland*, and the ſame to tranſport into any of the plantations, the Act 15 *Car.* II. Cap. 7. notwithſtanding. 3 *Ann.* Cap. 8. S. 1.

Provided, that no ſhip coming to the plantations from *Ireland* ſhall break bulk, until the maſter ſhall have made known to the governor, or to ſuch officer as ſhall be by him appointed, the arrival of the ſaid ſhip, with her name, and the name of the maſter, and ſhall have delivered a true inventory or invoice of the lading, together with the certificate from the chief officer of the port in *Ireland* where ſuch ſhip ſhall be laden, expreſſing the particulars of ſuch lading, with the names and abodes of the exporters, and of two perſons, who ſhall have made oath before ſuch chief officer, that the ſaid goods and linen are *bonâ fide* of the manufacture of *Ireland*; and until the maſter ſhall have made oath, before ſuch governor or officer, that the ſaid goods are the ſame that he took on board by virtue of ſuch certificate, nor until ſuch ſhip ſhall have been ſearched by an officer; and, in caſe the commander of ſuch ſhip ſhall break bulk before ſuch notice given and certificate produced, and ſuch oath made, or before ſuch ſearch, or if any goods of woollen manufacture, not laden in *Ireland*, neceſſary apparel of the commander and mariners excepted, or any linen goods not laden in *Ireland*, nor of the manufacture of *Ireland*, ſhall be found, ſuch ſhip ſhall be forfeited, together with all goods imported, or found in ſuch ſhip. Ditto, S. 2.

Makes it lawful to export, under certain regulations directly from *Ireland* to *Britiſh America*, the *Weſt Indies*, or any of the *Britiſh* ſettlements on the coaſt of *Africa*, any goods, the produce or manufacture of *Ireland*, except wool and woollen manufactures; and cotton manufactures; Hats, Glaſs, Hops, Gunpowder, and Coals. 18 *Geo.* III. c. 53.

And all goods of the growth, product, or manufacture of *Great-Britain*, imported from thence into *Ireland*, except woollen manufactures and glaſs. Alſo all foreign certificate goods, legally exported from *Great-Britain* to *Ireland* may be re-exported directly from *Ireland* to the ſaid plantations and ſettlements; but not to extend to foreign linens, painted, *&c.* in *Ireland*; nor to bar-iron, iron ſlit or rolled, plated or tinned, nor any manufactured iron wares, till a duty is impoſed thereon in *Ireland*. Nor to any ſuch articles if a bounty or premium is allowed thereon.

Allows the exportation of woollen manufactures from *Ireland* into any foreign part, and of glaſs, and repeals all former acts prohibiting the ſame. 20 *Geo.* III.

Any goods which may be legally imported from *Britiſh America*, the *Weſt-Indies*, or any of the *Britiſh* ſettlements on the coaſt of *Africa*, into *Great-Britain*, may, in like manner, be imported directly from the ſaid ſettlements to *Ireland*. 20 *Geo.* III. c. 10.

And any goods which may be legally exported from *Great-Britain* to *Britiſh America*, or the ſaid ſettlements, may be exported directly from *Ireland* to the ſame places.

On condition that the *Iriſh Parliament* impoſe on the goods to be ſo exported or imported, duties, and allow draw-backs, equal to thoſe impoſed and allowed on the exportation or importation of the ſaid goods in *Great-Britain*.

Gum Senega, or Gum Arabic: thirty tons may be exported annually from *Great-Britain* to *Ireland* duty-free, by licence from the Treaſury; to be uſed in the linen manufactures of that kingdom. 6 *Geo.* III. c. 46.

Clothing

Clothing and accoutrements, the produce of *Great-Britain* or *Ireland*, for the uſe of his majeſty's forces abroad, paid in part out of the *Iriſh* revenue, may be exported from *Ireland*. 15 *Geo.* III. c. 45.

No commodity, of the production of *Europe*, ſhall be imported into any plantation or place, which ſhall belong to his majeſty in *Aſia*, *Africa*, or *America*, but what ſhall be ſhipped in *England*, *Wales*, or *Berwick*, and in *Engliſh* built ſhipping, and whereof the maſter and three-fourths of the mariners are *Engliſh*, and which ſhall be carried directly thence to the ſaid plantations, under the penalty of the loſs of all ſuch commodities imported from any other place; and if by water, of the ſhip alſo, with her tackle. 15 *Car.* II. Cap. 7. S. 6.

Provided, that it ſhall be lawful to lade in ſhips navigated as in the foregoing clauſe, in any part of *Europe*, ſalt for the fiſheries of *New-England* and *Newfoundland*, and to ſhip in the *Madeiras*, wines of the growth thereof, and to ſhip in the weſtern iſlands or *Azores*, wines of the growth of the ſaid iſlands, and to take in ſervants or horſes in *Ireland*, and to ſhip in *Ireland* victuals of the production of *Ireland*, and the ſame to tranſport into any of the ſaid plantations. Ditto, S. 7.

Every perſon importing by land any goods into the ſaid plantations, ſhall deliver to the governor, or to ſuch perſon as ſhall be by him appointed within twenty-four hours after ſuch importation, his name, and a particular of all ſuch goods: And no ſhip coming to any ſuch plantation ſhall lade or unlade any goods, until the maſter ſhall firſt have made known to the governor, or ſuch other officer as ſhall be by him appointed, the arrival of the ſhip, with her name, and the name of her commander, and have ſhewn to him that ſhe is an *Engliſh* built ſhip, or made proof by producing ſuch certificate, that ſhe is a ſhip belonging to *England*, *Wales*, or *Berwick*, and navigated with an *Engliſh* maſter, and three-fourth parts of the mariners *Engliſh*, and have delivered to ſuch governor, or other officer, an inventory of her lading, with the places, in which the goods were laden, under the pain of loſs of the ſhip with her tackle, and of all ſuch goods of the production of *Europe*, as were not laden in *England*, *Wales*, or *Berwick*. Ditto, S. 8.

The word *Ireland* ſhall be left out of all bonds taken from any ſhip, which ſhall ſet ſail from *England*, *Ireland*, *Wales*, or *Berwick* for any *Engliſh* plantation in *America*, *Aſia*, or *Africa*; and, in caſe the ſhip ſhall load any of the ſaid commodities at the ſaid *Engliſh* plantations, the ſaid commodities ſhall be by the ſaid ſhip brought to ſome port of *England*, *Wales*, or *Berwick*, and ſhall there unload the ſame, danger of the ſeas excepted; and in like manner for all ſhips coming from any other port to the ſaid plantations, the governor of ſuch plantations ſhall, before the ſhips be permitted to load any of the ſaid commodities, take bond in the manner directed in the Act, 12 *Car.* II. Cap. 18. *for the encouraging of navigation*, that ſuch ſhip ſhall carry all the ſaid goods to ſome other of his majeſty's *Engliſh* plantations, or to *England*, *Wales*, or *Berwick*; and every ſuch ſhip which ſhall load any of the ſaid commodities, until ſuch bond given, or certificate produced, from the officers of ſome cuſtom-houſe of *England*, *Wales*, or *Berwick*, that ſuch bond hath been there given, or which, contrary to the tenor of ſuch bond, ſhall carry the ſaid goods to any place other than to other *Engliſh* plantations, or to *England*, *Wales*, or *Berwick*, and there lay the ſame on ſhore, every ſuch ſhip ſhall be forfeited, with her tackle and lading. 22 and 23 *Car.* II. Cap. 26. S. 11.

If any ſhip, which by law may trade in any of his majeſty's plantations, ſhall come to any of them to ſhip any of the ſaid commodities, and bond ſhall not be firſt given with ſurety, to bring the ſame to *England*, *Wales*, or *Berwick*, and there to unload the ſame, the danger of the ſeas excepted, there ſhall be paid to his majeſty, for ſo much of the ſaid commodities as ſhall be put on board ſuch ſhip, theſe duties, *viz.* for ſugar white, the hundred weight, 5s. brown ſugar and muſcovadoes, 1s. 6d. for tobacco, the pound, 1d. cotton wool one half-penny; indigo, 2d. ginger, the hundred weight, 1s. for logwood, 5l. for fuſtick, and all other dying woods, 6d. and for every pound of cocoa nuts, 1d. to be collected as ſhall be appointed in the plantations before the landing thereof, and under ſuch penalties as for defrauding his majeſty of his cuſtoms in *England*. 25 *Car.* II. Cap. 7. S. 2.

In caſe any perſon liable to pay the duties before-mentioned ſhall not have monies to pay the ſame, the officers ſhall accept ſuch a proportion of the commodities as ſhall amount to the value. Ditto, S. 4.

No

No goods ſhall be imported into, or exported out of any plantation, belonging to s majeſty, in *Aſia*, *Africa* or *America*, or ſhall be carried from any one port in the plan-tions to any other port in the ſame, the kingdom of *England*, *Wales*, or *Berwick*, in y ſhip but what ſhall be of the built of *England*, or of *Ireland*, or the plantations, d wholly owned by the people thereof, and navigated with the maſters, and three-urths of the mariners, of the ſaid places, except ſhips taken as prize, and condem-tion thereof made in the courts of admiralty in *England*, *Ireland*, or the plantations, be navigated by the maſter and three-fourths of the mariners *Engliſh*, or of the plan-tions, and whereof the property doth belong to *Engliſhmen*, under pain of forfeiture ſhip and goods. 7 and 8 *Will.* III. Cap. 22. S. 2.

Repeals ſo much of the above recited acts of 15, 22, and 23, of *Charles* II. and of the h and 8th of *William* III. as reſtricts the importation into the *Britiſh* colonies and ſet-ements in *America*, the *Weſt-Indies*, and on the coaſt of *Africa*, to *Great-Britain* alone; d orders the word *Ireland* to be put into all bonds taken from ſhips, lading commo-ties in the ſaid plantations to land the ſame in *Great-Britain* or *Ireland*, as directed by e navigation act, and allows the trade between *Ireland* and the ſaid colonies to be car-ed on in like manner as it is now carried on between *Great-Britain*, and the ſaid lonies and ſettlements. 20 *Geo.* III. c. 10.

Merchandizes may be exported or imported to and from this kingdom and places oreſaid, in any ſhips taken as prize, and whereof condemnation ſhall be made in one the courts of admiralty aforeſaid, and ſhall be navigated by the maſter, and three-urths of the mariners, *Engliſh*, and whereof the property ſhall belong to *Engliſhmen*. and 8 *Will.* III. C. 22. S. 3.

All ſhips coming into, or going out of any of the plantations, and lading or un-ding any goods, whether the ſame be his majeſty's ſhips of war, or merchants ſhips, d the commanders thereof, ſhall be liable to the ſame rules, viſitations and forfei-res, as to the entering, lading, or diſcharging their ſhips, as ſhips are liable to in is kingdom, by 13 and 14 *Car.* II. Cap. 11. *for preventing frauds in his majeſty's cuſtoms*; d the officers for collecting his majeſty's revenue, and inſpecting the plantation trade the plantations, ſhall have the ſame power for ſearching of ſhips, and taking their tries, and for ſeiſing goods prohibited, or for which any duties are payable, as are ovided for the officers of the cuſtoms in *England*, by the ſaid act, as alſo to enter uſes or warehouſes, to ſearch for and ſeiſe ſuch goods; and all wharfingers, lighter-en, or other perſons, aſſiſting in the concealment or reſcue of the ſaid goods, or in e hindering the officers in the performance of their duty, and the veſſels employed the conveyance of ſuch goods, ſhall be ſubject to the like penalties, as are pro-ded by the ſame act, in relation to prohibited or uncuſtomed goods in this kingdom; d the like aſſiſtance ſhall be given to the officers, as by the ſaid act is provided for e officers in *England*, &c. Ditto, Sect. 6.

Where any queſtion ſhall ariſe concerning the importation or exportation of any ods into or out of the ſaid plantations, the proof ſhall lie upon the owner, and the imer ſhall be reputed the importer or owner. Ditto, Sect. 7.

All laws, by-laws, uſages or cuſtoms, which ſhall be in practice in the plantations, re-gnant to the before-mentioned laws, or to this act, or any other law to be made in this ngdom, ſo far as ſuch law ſhall relate to the plantations, are void. Ditto, Sect. 9.

Where the governor, or officers appointed by the commiſſioners of the cuſtoms, the plantations, ſhall have ground of ſuſpicion, that the certificate of having given curity in *England* is falſe; the governor, or officers of the cuſtoms, ſhall take ſecurity ere for the diſcharge of the plantation lading in *Ireland*, *Wales*, or *Berwick*, (ſubſtitute e words *Great-Britain* or *Ireland*, in conformity to 20 *Geo.* III. C. 10.) and where there ll be cauſe to ſuſpect, that the certificates of having diſcharged her lading of plan-ion goods in this kingdom is falſe, the governor or officers ſhall not cancel the ſe-ity given in the plantation, until they be informed from the commiſſioners of the ſtoms, that the certificate is true; and if any perſon ſhall raſe or falſify any cocket, rtificate, return, or permit, for any veſſel or goods, or ſhall knowingly make uſe ereof, ſuch perſon ſhall forfeit five hundred pounds. Ditto, Sect. 10.

The commiſſioners of the treaſury, and the commiſſioners of the cuſtoms, may point ſuch officers of the cuſtoms in any city, town, river, port, harbour, or creek, any of the iſlands, tracts of land, and proprieties, as ſhall ſeem needful; alſo upon

any

any ſuits brought in the plantations, upon any law concerning his majeſty's duties, or ſhips or goods forfeited by reaſon of any unlawful importations or exportations, there ſhall not be any jury, but of ſuch only as are natives of *England* or *Ireland*, or born in his majeſty's plantations; and upon all ſuch ſuits the offences may be laid in any province, country, or diviſion, of any of the plantations, at the pleaſure of the informer. Sect. 11.

In all bonds to be taken in the plantations by 22 and 23 *Car.* II. Cap. 26. the ſureties ſhall be perſons of known reſidence and ability in the plantations, and the conditions of the bond ſhall be within eighteen months after the date, the danger of the ſeas excepted, to produce certificates of having landed the goods in one of his majeſty's plantations, or in *England*, *Wales*, or *Berwick*, (ſubſtitute the words *Great-Britain* or *Ireland*, in conformity to 20 *Geo.* III.) otherwiſe ſuch bond, or copies thereof, atteſted under the hand and ſeal of the governor to whom ſuch bonds were given, ſhall be in force and allowed of in any court in *England*, *Ireland*, or the plantations, as if the original were produced. Ditto, Sect. 13.

Tobacco exported to *Ireland*, if leſs appears to be landed than ſhipped in *Great-Britain*, an allowance, not exceeding *two per cent.* may be made for waſte during the voyage. 6 *Geo.* III. C. 21.

Repeals the acts of 12 and 15 *Charles* II. and any other act which prohibits or reſtrains the ſetting, planting, or improving to grow, making, or curing tobacco, either in ſeed, plant, or otherwiſe, in *Ireland*. 19 *Geo.* III. C. 35.

No ſhip ſhall paſs as a ſhip of the built of *England*, *Ireland*, *Wales*, *Berwick*, *Guernſey*, *Jerſey*, or any of his majeſty's plantations in *America*, ſo as to trade to the plantations, until the perſons claiming property in ſuch ſhip, ſhall regiſter the ſame, *viz.* if the ſhip belong to any port in *England*, *Ireland*, *Wales*, or *Berwick*, proof ſhall be made upon oath of one of the owners, before the collector and comptroller of his majeſty's cuſtoms in ſuch port; or if the ſhip belong to any of his majeſty's plantations in *America*, or to the iſlands of *Guernſey* or *Jerſey*, then the like proof to be made before the governor, with the principal officer of revenue reſiding on ſuch plantation or iſland. 7 and 8 *Will.* III. C. 22. S. 7.

By this act, entituled, *an act for the further increaſe and encouragement of ſhipping and navigation*, it is enacted, that from and after the *firſt day of Auguſt*, 1786, no ſhip or veſſel foreign built (except ſuch ſhips or veſſels as have been, or ſhall hereafter be, taken by any of his majeſty's ſhips of war, or by any private, or other ſhip or veſſel, and condemned as lawful prize in any court of admiralty) nor any ſhip or veſſel built or rebuilt upon any foreign-made keel or bottom, in the manner heretofore practiſed and allowed, although owned by *Britiſh* ſubjects and navigated according to law, ſhall be any longer intitled to any of the privileges and advantages of a *Britiſh* built ſhip, or of a ſhip owned by *Britiſh* ſubjects: and that all the ſaid privileges and advantages ſhall hereafter be confined to ſuch ſhips as are wholly of the built of *Great-Britain*, or *Ireland*, *Guernſey*, *Jerſey*, or the Iſle of *Man*, or of ſome of the colonies, plantations, iſlands, or territories in *Aſia*, *Africa*, or *America*, which now belong, or at the time of building ſuch ſhips or veſſels did belong, or which may hereafter belong to, or be in the poſſeſſion of his majeſty, his heirs or ſucceſſors. 26 *Geo.* III. 1786. C. 60. Sect. 1.

But foreign built ſhips belonging to *Britiſh* ſubjects in *Great-Britain*, or *Ireland*, &c. and regiſtered according to former acts of parliament, before the firſt day of *May*, 1786, ſhall continue to enjoy the privileges and advantages of *Britiſh* built ſhips navigated according to law.

Ships begun to be repaired, or rebuilt before the 1ſt of *May*, 1786, and regiſtered according to, and in purſuance of this act, by an order under the hands of the commiſſioners of his majeſty's cuſtoms, which they are authoriſed to grant, provided it ſhall appear to them, upon oath, that ſuch ſhips or veſſels were ſtranded, and were at the time of being ſo ſtranded, the ſole property of ſome foreigners, and having received ſuch damage that they could not proceed to ſea again without a thorough repair, and were therefore neceſſarily ſold, and purchaſed by *Britiſh* ſubjects, or being a droit of admiralty, ſhall enjoy all the privileges and advantages of *Britiſh*-built ſhips; provided always, that they have been ſo repaired; that *two thirds* of them, at the leaſt, are of *Britiſh* built.

No

No ſhip rebuilt, or repaired in a foreign port, ſhall be deemed *Britiſh* built, though originally wholly ſo, if ſuch repairs exceed *fifteen ſhillings per ton*, except ſhe ſhall receive ſuch extraordinary damage at ſea, during her being abſent from any of his majeſty's dominions, as ſhall oblige her to put into ſome foreign port, to undergo repairs exceeding that ſum; in which caſe the nature of ſuch diſtreſs, and the neceſſity of the repairs, are to be certified to the conſul, or other chief *Britiſh* officer reſiding there, upon the oath of the maſter, or other perſon having charge of the ſhip. The conſul to give his certificate of the particulars under his hand and ſeal, and in caſe there is no conſul, or other *Britiſh* officer, the ſaid certificate ſhall be given under the hands and ſeals of two *Britiſh* merchants; and on the arrival of the ſhip in *England*, it ſhall be delivered to an officer of the cuſtoms on oath. Sect. 2.

By this act the proviſions in the above clauſe are extended to ſhips or veſſels, having decks, and being of the burthen of fifteen tons or upwards.

No regiſtry to be made, but at the port to which a ſhip belongs, except for prizes condemned at *Guernſey*, *Jerſey*, or the Iſle of *Man*.

The port from and to which a ſhip uſually trades to be deemed her port.

No ſhip built in the United States of *America*, during the exiſtence of any prohibitory acts of parliament, ſhall be entitled to be regiſtered.

The oath required on regiſtering ſhips by 7 and 8 *William* III. is repealed, and no ſhip or veſſel to be regiſtered till the following oath be taken by one, or more of the owners; and if more than two joint owners, then by the greater part, if they reſide within twenty miles of the port to which the ſhip belongs; but if they all reſide at a greater diſtance, one owner taking the oath is ſufficient.

I *A. B.* of [*place of reſidence and occupation*] do make oath that the ſhip or veſſel [*name*] of [*port or place*] whereof [*Maſter's name*] is at preſent maſter, being [*kind of built, burthen*, et cætera, *as deſcribed in the certificate of the ſurveying officer*] was [*when and where built, or if prize, capture and condemnation*] and that I the ſaid *A. B.* [*and the other owner's names and occupations, if any, and where they reſpectively reſide*, videlicet, *town, place, or pariſh, and county, or if member of, and reſident in, any factory in foreign parts, or in any foreign town or city, being an agent for, or partner in, any houſe or copartnerſhip actually carrying on trade in* Great-Britain *or* Ireland, *the name of ſuch factory, foreign town or city, and the names of ſuch houſe or copartnerſhip*] am [*or* are] ſole owner [*or* owners] of the ſaid veſſel, and that no other perſon or perſons whatever hath or have any right, title, intereſt, ſhare, or property therein or thereto, and that I the ſaid *A. B.* [*and the ſaid other owners, if any*] am [*or* are] truly and *bonâ fide* a ſubject [*or* ſubjects] of *Great-Britain*; and that I the ſaid *A. B.* have not [*nor have any of the other owners, to the beſt of my knowledge and belief*] taken the oath of allegiance to any foreign ſtate whatever [*except under the terms of ſome capitulation, deſcribing the particulars thereof*] or that ſince my taking [*or his to their taking*] the oath of allegiance to [*naming the foreign ſtates reſpectively to which he or any of the ſaid owners ſhall have taken the ſame*] and prior to the paſſing of an act in the twenty-ſixth year of the reign of king *George* the third, (intituled, *an act for the further increaſe and encouragement of ſhipping and navigation*), I have [*or he or they hath or have*] become a ſubject [*or* ſubjects] of *Great-Britain* [*either by his majeſty's letters patent, as a denizen or denizens, or naturalized by act of parliament, as the caſe may be, naming the dates of the letters of denization, or the act or acts of parliament for naturalization reſpectively*] or [*as the caſe may be*] I have [*or he or they hath or have*] become a denizen [*or* denizens, *or* naturalized ſubject *or* ſubjects, *as the caſe may be*] of *Great-Britain*, by his majeſty's letters patent, or by an act of parliament paſſed ſince the firſt day of *January* one thouſand ſeven hundred and eighty-ſix, [*naming the times when ſuch letters of denization have been granted reſpectively, or the year or years in which ſuch act or acts for naturalization have paſſed reſpectively*] and that no foreigner, directly or indirectly, hath any ſhare or part or intereſt in the ſaid ſhip or veſſel.

In caſe the ſhip to be regiſtered ſhall belong to three or more joint owners, and three of them do not perſonally attend to take and ſubſcribe the aforeſaid oath; then the owner or owners preſent ſhall further make oath, that the part owner or owners abſent, are not reſident within twenty miles of the ſhip's port, and to the beſt of their knowledge

knowledge and belief have not abſented themſelves in order to avoid taking the ſaid oath. Sect. 11.

Before regiſtering or granting any certificate of regiſtry, the ſhip ſhall be examined by proper perſons appointed by the commiſſioners of the cuſtoms in *England* or *Scotland*; or by the governor, lieutenant governor, or commander in chief of *Guernſey*, *Jerſey*, and *Man*; or of the colonies, plantations, iſlands, or territories aforeſaid; to diſcover whether ſuch ſhip or veſſel is the ſame with that, for which, a certificate is alledged to be granted.

Perſons giving falſe deſcriptions of ſhips, or making falſe regiſtries, knowingly, ſhall forfeit the ſum of one hundred pounds, as well maſters, and owners, as examiners on the part of government. Sect. 13.

Bond to be given, not to lend, ſell, or diſpoſe of certificates of regiſtry, and to deliver them up to the proper officers above-mentioned, in caſe any foreigner or foreigners ſhall by purchaſe or otherwiſe become whole or part owners of any ſhip or veſſel regiſtered as aforeſaid; or, in caſe the ſhip ſhall be loſt, or taken by an enemy, and the certificate is preſerved, penalty for non-compliance, from three hundred to one thouſand pounds, according to the burthen of the ſhip. Alſo the *Mediterranean* paſſes that may have been obtained ſhall be delivered up with the certificate of regiſtry, upon any ſuch transfer of property in the ſhip. Sect. 15.

Not only the ſale or transfer of any part, or of the whole property in any ſhip, within the port to which ſhe belongs, ſhall be acknowledged by indorſement on the regiſtry, and certificate ſo delivered up, agreeable to 7 and 8 *William* III. but there ſhall alſo be indorſed before two witneſſes, the town, place, or pariſh, where all and every perſon or perſons to whom the property in any ſhip or veſſel, or any part thereof, ſhall be ſo transferred, ſhall reſide; and if reſiding in foreign parts, as member of any *Britiſh* factory, or as a *Britiſh* merchant, the name of the place, and of the factory where he or they reſide, and of their co-partners or agents in *Great-Britain* or *Ireland*; and copies of ſuch indorſement ſhall be delivered by ſuch agents or co-partners to the offices appointed to regiſter and grant certificates of regiſtry.

In all caſes of transfer, the original certificate of regiſtry ſhall be recited in words at length, in the bill or other inſtrument of ſale. Alſo the changes of the maſters of ſhips and veſſels ſhall be indorſed on the ſaid certificates.

And whereas many frauds have been committed by the frequent change of names given to ſhips and veſſels; be it therefore enacted, that it ſhall not be lawful for any owner or owners of any ſhip or veſſel to give any name to ſuch ſhip or veſſel, other than that, by which ſhe was firſt regiſtered in purſuance of this act: And that the owner or owners within one month from the time of regiſtering ſhall paint, or cauſe to be painted, in white or yellow letters, of a length not leſs than four inches, upon a black ground, on ſome conſpicuous part of the ſtern, the name by which ſuch ſhip or veſſel ſhall have been regiſtered, and the port to which ſhe belongs. The penalty on eraſure, or concealment of ſuch names, or on giving any other in any writing, printed paper, or other document; or, for not keeping up, and preſerving the ſame, is one hundred pounds. Sect. 19

Perſons applying for certificates in *Great-Britain*, *Guernſey*, *Jerſey*, or the *Iſle of Man*, for ſhips or veſſels which ſhall be built, or whoſe building ſhall be completed after the 1ſt of *Auguſt*, 1786, ſhall produce a particular account of the ſame under the hand of the builder, and make oath of the identity of ſuch ſhip or veſſel. This clauſe to be extended to the colonies, plantations, &c. after the 1ſt of *January*, 1787. Ships regiſtered before this act, are to exchange their certificates, and apply for new ones in conformity thereto: And others, now appointed to be regiſtered by this act, muſt apply for certificates, *viz.* within twelve months for ports within *Great-Britain*; and eighteen months for the colonies, plantations, &c.

Ships leaving port without certificates ſhall be forfeited; if found in any other port, ſhall give bond to procure certificate. Sect. 32.

If ſquare rigged veſſels cannot enter the ports to which they belong for want of depth of water, certificates may be obtained upon their being ſurveyed at the port where they touch. Sect. 33.

Certificates of regiſtry to be produced at every port, in which any ſhip or veſſel ſhall arrive, either in his majeſty's dominions, or in foreign countries, under penalty of one hundred pounds. *Britiſh* conſuls abroad to inſpect ſuch certificates. 22 and 23 *Car.* II. c. 26. Sect. 34.

Perſons making falſe oaths to any of the matters herein before required to be verified, ſhall ſuffer the pains and penalties incurred by perſons commiting wilful and corrupt perjury. And perſons altering or making uſe of altered, eraſed, or falſified certificates, ſhall forfeit the ſum of five hundred pounds. Sect. 41.

Former acts of trade and navigation not repealed by this act, to remain in full force. Sect. 43.

All ſhips or veſſels regiſtered in *Ireland*, according to an act of parliament of that kingdom, paſſed in the preſent ſeſſion, ſhall enjoy all the privileges and advantages of ſhips and veſſels owned by any of his majeſty's ſubjects. 27 *Geo.* III. 1787, c. 19. S. 1.

Every ſhip and veſſel belonging to his majeſty's ſubjects in *Ireland* regiſtered there, according to law, previous to the ſaid act, ſhall continue to enjoy the like privileges during the times appointed by the commiſſioners of the revenue of *Ireland*. But at the expiration of ſuch time, they ſhall be regiſtered, *de novo*, agreeable to the ſaid act. Sect. 2.

No oath to be taken by any *Britiſh* ſubject in any foreign ſtate, to enable him to become a citizen or burgher during his temporary reſidence, ſhall be deemed an oath of allegiance to ſuch ſtate, depriving him of the rights of regiſtering his ſhip or veſſel, according to the tenour of the oath of regiſtry of 26 *Geo.* III. Sect. 4.

Inſtead of the owners, as in the caſe of private ſhips, the ſecretary to the *Eaſt-India* company, or ſome other officer belonging to any other body corporate, ſhall take and ſubſcribe the oath of regiſtry, depoſing that the ſhip doth wholly and truly belong to the ſaid company, or other body corporate. Sect. 5.

Veſſels not exceeding *thirty* tons burthen, and not having a fixed deck, may be employed in the fiſhery at *Newfoundland*, and the ſhores of *Quebeck*, *Nova Scotia*, &c. without being regiſtered. Sect. 8.

Ships built at *Newfoundland*, &c. for *Britiſh* ſubjects reſiding in his majeſty's dominions in *Europe*, may be regiſtered there by the ſhip's huſband or agent, on his taking the oath required by 26 *Geo.* III. but ſuch ſhip on its arrival in *Europe* muſt be regiſtered, *de novo*, conformable to that act. Sect. 9.

After the 1ſt of *July*, 1787, goods and commodities of the growth, production, or manufacture of *Europe*, enumerated and ſpecified in the acts of 12, 13, 14 of *Charles* II. and 6 *Geo.* I. may be imported into *Great-Britain*, either in *Britiſh* built ſhips, or in ſhips built in the country, or place, in which ſuch goods or commodities, grow or are produced, ſubject to the rules, regulations, and reſtrictions, contained in the ſaid acts. Sect. 10.

Goods of *Morocco* imported into *Gibraltar* may be imported from thence in ſhips built in his majeſty's dominions, or ſhips belonging thereto, prior to the 1ſt of *May*, 1786, on payment of the ſame duties, as if imported from *Africa*. Sect. 11.

Provided always, that ſuch goods ſhall be accompanied with a certificate, that they were imported into *Gibraltar*, in ſuch ſhips or veſſels as above deſcribed. Sect. 12.

All ſhips and veſſels which by 26 *Geo.* III. c. 60, are declared not to be intitled to the privileges of *Britiſh* built ſhips, ſhall be deemed *alien* ſhips, liable to the ſame duties, penalties, and forfeitures as *alien* ſhips.

Ships built in *Ireland*, and owned by his majeſty's ſubjects reſiding in any part of the *Britiſh* dominions in *Europe*, to be deemed *Britiſh* built, and intitled to the like privileges and advantages in all reſpects, as ſhips built in *Great-Britain*: And, ſhips belonging to any of his majeſty's ſubjects reſiding in *Ireland*, and not *Britiſh* built, are to be intitled to the ſame privileges and advantages in all parts of his majeſty's dominions, as ſhips belonging to his majeſty's ſubjects reſiding in *Great-Britain*, and not *Britiſh* or *Iriſh* built, are intitled to. Confirmed by 27 *Geo.* III. c. 90. *Sect.* 1. 18 *Geo.* III. c. 55. Sect. 9.

Bounties, and other Advantages granted by the Legiſlature, to the Owners and Maſters of Ships; and to Sailors, and Fiſhermen, for the Encouragement of the NEWFOUNDLAND, GREENLAND, *and other* BRITISH FISHERIES.

IT having been found by long experience that ſeveral of the proviſions and regulations, hitherto in force, for encouraging the fiſheries carried on at *Newfoundland*, and parts adjacent, are inſufficient to anſwer the good purpoſes thereby intended. 26 *Geo.* III. 1786, c. 26.

It is hereby enacted, that from and after the *firſt* of *January*, 1787, the reſpective bounties herein aftermentioned, ſhall be paid and allowed annually, for *ten years*, to a certain number of ſhips or veſſels employed in the *Britiſh* fiſhery on the banks of *Newfoundland*, under the limitations and reſtrictions hereinafter expreſſed, that is to ſay, that ſuch veſſels as ſhall appear to be *Britiſh* built, and wholly owned by his majeſty's ſubjects reſiding in *Great-Britain*, *Ireland*, or the iſlands of *Guernſey*, *Jerſey*, or *Man*, and ſhall be navigated each with a maſter, and at leaſt three-fourths of the mariners being *Britiſh* ſubjects, uſually reſiding in his majeſty's *European* dominions; and ſhall be fitted and cleared out from ſome port in *Great-Britain*, or the aforeſaid iſlands, after the ſaid firſt of *January*, 1787, and after that day in each ſucceeding year, and ſhall proceed to the banks of *Newfoundland*, and having catched a cargo of fiſh upon thoſe banks, conſiſting of not leſs than 10,000 fiſh by tale, ſhall land the ſame at any one of the ports in the north, the eaſt, or ſouth ſide of the iſland of *Newfoundland*, between *Cape St. John* and *Cape Ray*, on or before the 15th of *July* in each year; and ſhall make one more trip, at leaſt, to the ſaid banks, and to return with another cargo of fiſh catched there, to the ſame port.—In ſuch caſe, the *one hundred* ſhips that ſhall firſt arrive at *Newfoundland*, and catch the cargo of fiſh, and make the trip afore-mentioned, ſhall, if navigated with not leſs than twelve men each, be intitled to *forty pounds* each; but if navigated with leſs than twelve men, and not leſs than ſeven, they ſhall be intitled to *twenty-five pounds* each: Provided always, that in either of the caſes abovementioned, any of the one hundred veſſels ſo firſt arriving, which ſhall be wholly navigated by men going out upon ſhares, that is ſay, receiving a certain ſhare of the profits of the voyage in lieu of wages, ſuch of the ſaid veſſels as ſhall be ſo navigated with not leſs than twelve men each, ſhall be intitled to *fifty pounds*; and if ſo navigated with a leſs number than twelve, and not leſs than ſeven men, to *thirty-five pounds* each. Sect. 1.

For the ſecond hundred, in the order of time, arriving at the banks, catching the fiſh, and making the trip aforeſaid; navigated with not leſs than twelve men *twenty-five pounds* each. If with not leſs than ſeven men *eighteen pounds* each—If the men go out upon ſhares, *thirty-five pounds* for twelve men, and *twenty-one pounds* each, for not leſs than *ſeven* men.

Certificates to be produced to the collector of the cuſtoms, at the port in *Great-Britain*, from which the ſhips were cleared out, under the hands of the governor, or deputy governor, or principal officer of the cuſtoms at *Newfoundland*, certifying the qualifications of the ſhips, and the conformity of the maſters to the aforeſaid regulations, the ſaid certificate muſt likewiſe have been founded upon another under the hand and ſeal of the naval officer ſtationed on the banks, and delivered to the governor, or ſome perſon appointed by him, teſtifying the time of the ſhip's arrival, the requiſite quantity of fiſh being caught, &c. and the whole muſt be further confirmed by the oaths of the maſters and mates of each veſſel. The collectors of the cuſtoms at the port in *Great-Britain* to which the ſhips return, are impowered to pay the reſpective bounties from the funds appointed for that purpoſe by 15 *Geo.* III.

The certificates and affidavits made before the naval officer or commander of any of his majeſty's ſhips ſtationed on the coaſt, in order to ſatisfy the governor, or deputy governor, of the facts, whereon he is to ground his certificate, muſt be delivered within

in the diſtrict of *St. John's*, in the ſaid iſland of *Newfoundland*, before the 15th of *September* in each year; and within any other diſtrict of the iſland before the 30th of *September* in each year. 15 *Geo.* III. Sect. 3.

Maſters of veſſels, previous to receiving the bounties, to make oath, that all the men belonging to his ſhip, who ſailed out with him, or a number of men equal to them, are returned to *Great-Britain*, unleſs any of them have died at *Newfoundland*, or on the voyage. Sect. 4.

Hirers or employers of fiſhermen are by this act allowed to advance to ſeamen and fiſhermen more than half the wages due to them, or contracted for; provided the ſum do not exceed five pounds ten ſhillings for each *green* man, and that a reſerve of forty ſhillings be kept in the employer's hands to pay the charges of bringing him home purſuant to the regulations of 15 *Geo.* III. Sect. 5.

Seamen or fiſhermen, wilfully abſenting themſelves for one day, or neglecting, or refuſing to work, ſhall forfeit five days pay, for every day's neglect, refuſal to work, or abſence; to be paid to the hirer or employer of ſuch ſeamen or fiſhermen at the diſcretion of the governor, in recompence for the loſs he may have ſuſtained by ſuch abſence or neglect. Sect. 6.

No oil, or blubber to be entered duty-free in any port of *Great-Britain*, till the maſter or other perſon, having the command of the ſhip or veſſel in which it is imported, ſhall have made oath before the collector, or other chief officer of the cuſtoms, that the ſame, and every part thereof, is really and *bonâ fide* the oil or blubber of fiſh, or creatures, actually caught and taken on the banks and ſhores of *Newfoundland* and parts adjacent, wholly by his majeſty's ſubjects carrying on the ſaid fiſhery, from his majeſty's *European* dominions; and uſually reſiding in the ſaid dominions. A ſimilar oath is to be taken relative to ſeal ſkins. Sect. 7.

Oil, blubber, or ſeal ſkins, purchaſed at *Newfoundland*, upon producing certificates, that the ſame was the produce of fiſh, or creatures caught there by *Britiſh* ſubjects, and the further oath of the maſter of the ſhip, may be entered duty-free. Sect. 9.

It ſhall not be lawful to uſe any ſean or net of any kind or denomination whatſoever, for catching cod fiſh, the ſcale or meſh of which ſean or net ſhall be leſs in dimenſion than four inches, under the penalty of forfeiting one hundred pounds for each offence.

Seamen or fiſhermen deſerting from *Newfoundland*, with an intention to enter into the ſervice of foreign ſtates, ſhall, if they came from his majeſty's *European* dominions, be impriſoned three months, and then ſent home; and in caſe they do not come from his majeſty's *European* dominions, they ſhall, upon conviction, be impriſoned twelve months. Sect 12.

No *Britiſh* ſhip, veſſel, or boat, belonging to the fiſhery, to be ſold, bartered, or exchanged with any foreigner whatever, nor any tackle, hook, baits, or other tools or implements of the ſaid fiſhery. Perſons found guilty of ſelling, bartering, or exchanging the ſame, or aiding or abetting therein, ſhall be committed to priſon till the next quarter-ſeſſion, and ſhall forfeit treble the value of the articles ſold, bartered or exchanged. No foreign goods or commodities ſhall be bought or bartered for by any fiſherman, under the ſame penalties upon conviction. Sect. 13.

The foregoing proviſions not to extend to the importation of bread, flour, Indian corn, or live ſtock in *Britiſh* ſhips, in purſuance of the act of this ſeſſion for the encouragement of navigation, &c. Sect. 10.

No more than forty ſhillings to be paid for the paſſage to *Great-Britain* for every perſon put on board by order of the governor or deputy governor to be carried to *Great-Britain*. The ſaid forty ſhillings to be paid by the commiſſioners of the navy, if the funds in the hands of the collectors of the cuſtoms at the port to which any ſhip returns are deficient. Sect. 18.

Officers commanding any of his majeſty's ſhips, ſtationed at the iſland of *Newfoundland*, are impowered to ſearch, examine, and detain *Britiſh* ſhips or veſſels, coming to or going from the ſaid iſland, which he ſhall have reaſon to ſuſpect are going to or coming from the iſlands of *St. Piere* or *Miquelon* for the purpoſes of lading contraband goods, or commodities, or of bartering fiſhing-tackle, tools, &c. for ſuch commodities; and if ſuch commodities or merchandiſe ſhall be found on board, the veſſel and good ſhall be forfeited. Sect. 20.

Suits, relative to ſhips ſeized, to be carried on in the vice-admiralty court at *Newfoundland*. If it ſhall appear upon trial that there was a probable cauſe for ſeizure, though a verdict be given for the defendant or defendants, claimer or claimers of any ſhip or veſſel, the judge of the court is to grant a certificate to the officer who ſeized her, ſtating ſuch probable cauſe, which ſhall be given in evidence againſt any action to be brought in any court in *Great-Britain*. 15 *Geo.* III. Sect. 21.

No action ſhall be commenced for any thing done in conſequence of this act, after three months, from the time of committing the offence, at *Newfoundland* or in *Great-Britain*, unleſs commenced there, three months after the return of the perſon or perſons complained of. Sect. 22.

His majeſty's ſubjects reſiding in *Ireland* may tranſport directly from thence to *Newfoundland*, or to any part of *America* where the fiſhery is carried on, proviſions, hooks, lines, netting, or other tools or implements neceſſary for the fiſhery; being the product and manufacture of *Great-Britain* or *Ireland*. 19 *Geo.* III. C. 31. S. 3.

This act, for the encouragement of the *ſouthern whale* fiſhery, eſtabliſhes new and additional premiums for the fiſheries carried on by his majeſty's *European* ſubjects in the ſeas to the *ſouthward* of the *Greenland ſeas* and *Davis's ſtraits*, for the purpoſe of taking whales and other creatures found in thoſe ſeas. It repeals the acts of 15 and 16 *Geo.* III. (our guide in the laſt edition of this work) and grants the following premiums to twenty ſhips regiſtered, manned, &c. according to the regulations of the act of 26 *Geo.* III. cap. 26. To *fifteen* of the ſhips or veſſels ſo fitted out between the firſt of *May* and the firſt of *September*, 1786, in each of the ſucceeding *ten* years, and which ſhall have ſailed to the ſouthward of the *ſeventh* degree of *north latitude*, and ſhall there have *bonâ fide* carried on the ſaid fiſhery; and ſhall return to ſome port in *Great-Britain* before the firſt of *July*, in the year ſubſequent to that in which they cleared out, there ſhall be paid the ſum of *five hundred pounds* to each of the three firſt ſhips that ſhall arrive, with the greateſt quantity of oil or head-matter taken together, being not leſs in the whole than *twenty tons* in each ſhip, and being the produce of one or more whale or whales, or other creature living in the ſeas, taken and killed by the crews of every ſuch ſhip or veſſel.——*Four hundred pounds* to the three ſhips next arriving under the foregoing circumſtances.——*Three hundred pounds* for the next three ſhips.——*Two hundred pounds* for the next three.——And *one hundred pounds* for the three laſt of the fifteen. 26 *Geo.* III. 1786. c. 50.

For the *five* ſhips or veſſels laſt fitted out, and ſailing to the ſouthward of the *thirty-ſixth* degree of ſouth latitude, and returning within the times before limited, the following premiums ſhall be paid and allowed.—*Seven hundred pounds* for the firſt ſhip that arrives at any port in *Great-Britain*.—*Six hundred pounds* for the ſecond of ſuch ſhips.—*Five hundred pounds* for the third ſhip.—*Four hundred pounds* for the fourth ſhip.—*Three hundred pounds* for the fifth ſhip. The quantity of oil and head-matter taken together to be not leſs than *twenty tons*, in each ſhip or veſſel, and the greateſt quantity in each ſhip to have the largeſt premium, and ſo in proportion; regard being alway had to the priority of the time of arrival.

The maſter and three-fourths of the crew muſt be *Britiſh* ſubjects, or foreign proteſtants intending to ſettle in *Great-Britain*. Sect. 5.

No premium ſhall be paid unleſs there be an apprentice for the term of three years on board the ſhip that claims it, for every *fifty* tons burthen of the ſaid ſhip: thus a ſhip of 200 tons burthen muſt carry out *four* apprentices, and ſo in proportion; or forfeit all pretentions to any of the premiums. Sect. 6.

No premium ſhall be paid for any ſhip, under the aforeſaid circumſtances, unleſs a regular log-book has been kept during the whole courſe of the voyage; which ſhall be produced to the commander of any of his majeſty's ſhips of war, that may be met with at ſea; or to the *Britiſh* conſul at any foreign port, into which the ſaid ſhip or veſſel may happen to put; and the commander of the ſhip of war, and the *Britiſh* conſul, are required to make memorandums in the ſaid log book, of the day on which it was produced to them. Alſo, on the arrival of any ſuch ſhip or veſſel in any port of *Great-Britain*, with a cargo intitled to a premium, the maſter ſhall deliver up his log book to the collector of the cuſtoms at the ſaid port; and jointly and ſeparately himſelf and his mate ſhall verify on oath, the contents of the ſaid log book. Sect. 7 and 8

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The maſter, mate, and two of the mariners belonging to every ſuch ſhip or veſſel ſhall make oath, upon the importation of any oil or head-matter, that it is the produce of fiſh, or other creatures killed by the ſhip's crew, within the latitudes preſcribed. 26 *Geo.* III. c. 50. Sect. 9.

Perſons taking out any part of the cargo of another ſhip to add to their own, in order to obtain any premium, ſhall forfeit *five hundred pounds*. And, on information given of this offence, the owners of ſuch ſhips and veſſels ſhall not pay any money that ſhall be due to him, the ſaid maſter, but ſhall pay it to the collector of the cuſtoms, towards diſcharging the ſum forfeited, upon conviction: and, if the owner or owners do not comply with this clauſe, they ſhall be made accountable for the ſum they have paid to the ſaid maſter. Sect. 10.

The produce of whales, caught near the latitudes before recited, by ſhips on their voyage out, or on their return home, to be accounted part of the quantity entitling them to premiums, provided they have actually ſailed and *bonâ fide* carried on the fiſhery in the ſaid latitudes, and within the times before ſpecified. Sect. 11.

Ships employed in the *Southern* whale fiſhery, may ſail and paſs for that purpoſe to the eaſtward of the *Cape of Good Hope*, and to the *weſtward* of *Cape Horn*, or through the *Straits of Magellan*. Sect. 14.

But ſuch ſhips, ſailing to the *eaſtward* of the *Cape of Good Hope*, ſhall not ſail or paſs to the *northward* of *thirty* degrees of *ſouth* latitude, nor make more than *fifteen* degrees of *eaſt longitude*, from the ſaid *Cape of Good Hope*; nor ſhall any ſuch ſhip or veſſel ſo ſailing and paſſing to the *weſtward* of *Cape Horn*, or through the *Straits of Magellan*, for the purpoſe aforeſaid, be allowed to paſs to the *northward* of the *equinoctial line*, nor make more than *fifty* degrees of *weſt longitude* from *Cape Horn*. Sect. 15.

Ships, intending to ſail to the *eaſtward* of the *Cape of Good Hope*, muſt take out a licence before they leave *Great-Britain* from the *Eaſt-India* company; and the ſaid company ſhall not be required to grant licences to more than ten ſhips in one ſeaſon. Sect. 19.

Ships ſailing out of their limits, or having improper merchandize on board, ſhall be liable to the penalties incurred for ſhips tradingto the *Eaſt Indies* without leave. Sect. 17.

Ships that have obtained licences from the *Eaſt India* company to ſail to the *eaſtward* of the *Cape of Good Hope*, muſt, within thirty days after their return to *Great Birtain*, obtain a certificate from the *Eaſt India* company, that no *Eaſt India* goods have been imported in ſuch ſhips, before they can obtain any premium under the authority of this act. Sect. 18.

Ships or veſſels, in like manner intending to navigate within, or frequent any part of the ſeas comprized in the boundaries of the excluſive trade of the *South Sea company*, muſt take out a licence from the ſaid company. Sect. 19.

No ſhip or veſſel ſhall be intitled to more than one premium in the ſame ſeaſon. And if water be mixed with the oil imported it ſhall be forfeited, together with all claims to any premium. And in caſe of any diſpute, the owners of the ſhips, if required by the officers of his majeſty's cuſtoms, ſhall prove the purity of the oil. Sect. 20, 21.

The quantity of oil and head-matter imported ſhall be aſcertained by an officer of the cuſtoms before any premium is paid. Oil and head-matter may be imported duty free, in *Britiſh*-built ſhips. Sect. 22, 23.

Foreigners, ſettled in *Great-Britain*, who have carried on the fiſhery *five years*, ſhall be naturalized, upon producing a certificate thereof, from the proper officers of his majeſty's cuſtoms, and taking the oath of allegiance. Sect. 24.

No harpooner, line manager, or boat ſteerer, belonging to any ſhip or veſſel fitted out on the aforeſaid fiſhery, ſhall be impreſſed from the ſaid ſervice. Sect. 25.

Ships belonging to foreign Proteſtants coming to reſide in any part of *Great-Britain* before the 25th of *June*, 1787, and which ſhips, not to exceed forty in number, were built before the firſt of *June*, 1786, may be licenced by his majeſty in council to carry on this fiſhery, ſubject to the ſeveral regulations aforeſaid; and import oil, &c. duty free, but ſhall not be intitled to any premium in virtue thereof. And in caſe of the death of a foreigner, whoſe family has been reſident in *Great-Britain* five years, and whoſe ſhip has been employed in the fiſhery five ſeaſons, licence ſhall be granted to her as a *Britiſh* built ſhip. The owners of ſuch ſhips to take the oath of allegiance before the certificate of regiſtering the ſhip is granted. Sect. 26, 27.

Officers

Officers of the cuſtoms, &c. granting falſe certificates, are made liable to a penalty of five hundred pounds, upon conviction; and rendered incapable of ſerving his majeſty, his heirs, and ſucceſſors, in any office whatever. 26 *Geo.* III. c. 50. Sect. 29.

It would be unpardonable to cloſe this important article, without noticing the beneficial effects of theſe encouragements given to our fiſheries in foreign parts.

Only eighteen ſhips were employed in the ſouthern whale fiſhery in 1785; and the amount of their cargoes, was eſtimated at 30,000l. In 1787, when the additional bounties and privileges granted by the legiſlature began to take effect, no leſs than thirty-eight ſhips were employed, and the cargoes were eſtimated at 100,000l. And it is highly probable that the public ſtatement of this valuable branch of commerce made up for the year 1790, will make the number of ſhips employed near ſixty, and the amount of the cargoes about 300,000l.

The *Greenland* fiſhery before the laſt war never employed more than one hundred ſhips; there are now upwards of two hundred and fifty employed in that buſineſs, to the great increaſe of our ſhipping and navigation; and the cargoes are valued at 500,000l.

Home Fiſheries.

WE muſt now take a curſory view of the great advantages likely to accrue from the encouragements lately given to the fiſheries eſtabliſhed, and to be eſtabliſhed within the realm of *Great Britain.*

The pilchard fiſhery was greatly promoted by an act of parliament of 25 *Geo.* II. whereby a bounty of ſeven ſhillings was granted for every caſk or veſſel of pilchards, containing 50 gallons taken, cured, and exported, from any port or place in *Great-Britain*, to parts beyond the ſea; and ſo in proportion for a greater or leſſer quantity thereof; and the ſaid act recites two former acts of 5 *Geo.* I. and 3 *Geo.* II. by which a bounty of two ſhillings had been granted, for the before named quantities of pilchards, ſo taken and cured. Theſe acts expiring, the two bounties united are granted for five years, from 1786 to 1791; and nine ſhillings for every caſk or veſſel containing fifty gallons, exported as aforeſaid, is allowed; provided always, that in caſe more than 20,000 hogſheads ſhall be exported in one year, only ſeven ſhillings ſhall be paid for the quantity exceeding 20,000 hogſheads; and the additional two ſhillings on every caſk or veſſel of fifty gallons, ſhall be divided and ſhared proportionally by the ſhips exporting together to the total amount of 20,000 hogſheads. 26 *Geo.* III. c. 45.

Incorporates certain perſons therein named, by the name and ſtile of *The Britiſh Society* for extending *the fiſheries, and improving the ſea coaſts of this kingdom*; and enables them, when incorporated, to ſubſcribe a joint-ſtock, and therewith to purchaſe lands, and build thereon free-towns, villages, and fiſhing ſtations, in the highlands, and iſlands, in that part of *Great-Britain* called *Scotland*; and for other purpoſes. The preamble ſtates the obvious national benefits that muſt be derived from this capital undertaking, if it ſucceeds, of which there can be but little doubt; ſince the members of the corporation named in the act conſiſts of the principal nobility and gentry of *Scotland*; in ſhort, it is an aſſociation of power, influence, and riches, combined for the improvement of the highlands and iſlands of *North-Britain*, and calculated to obviate thoſe impediments, which rendered former attempts of a ſimilar nature abortive. 26 Geo. III. c. 106.

Empowers them to purchaſe lands; and ſect. 3, enables them to raiſe a joint capital ſtock or fund, for the purpoſes of building free-towns, villages, harbours, quays, piers, &c. The ſum to be ſo raiſed not to exceed 150,000l. ſterling; and to be divided into ſhares of fifty pounds each; each ſhare intitling the ſubſcriber to one vote, at all meetings for tranſacting the affairs of the ſociety. Two ſhares to intitle to only one vote; three or four, to only two; five, ſix, and ſeven ſhares to only three; eight or nine

ſhares

ſhares to four; and ten ſhares to five votes, and no more. Votes in theſe proportions to be admitted by proxy. 26 *Geo.* III. c. 106. Sect. 2.

Then follow the oath of the governor, and other officers, and the bye-law, founded on precedent of ſimilar commercial ſocieties, and containing nothing new or extraordinary.

No transfer, other than by gift or bequeſt ſhall be made of any of the ſaid capital-ſtock, or ſhare, under three years, from Auguſt 10, 1786. Sect. 22.

The books of accounts relating to the ſociety ſhall be ſtated and ſettled; and every proprietor ſhall have free acceſs to them, at convenient times. Sect. 25.

Encouragement of Britiſh-made Sail Cloth.

EVERY ſhip which ſhall be built in *Great-Britain*, and every ſhip built in his majeſty's plantations in *America*, ſhall, upon her firſt ſetting out, have one complete ſet of ſails, made of cloth manufactured in *Great-Britain*, and in caſe ſuch ſhip ſhall not be fitted as aforeſaid, the maſter ſhall forfeit 50l. 9 *Geo.* II. Cap. 37. S. 4.

No perſon ſhall make into ſails or tarpawlins, any foreign ſail-cloth imported after the 24th of *June*, 1731, not ſtamped; and in caſe any perſon ſhall make up foreign ſail-cloth, other than as aforeſaid, ſuch ſails and tarpawlins ſhall be forfeited, and ſuch perſon ſhall forfeit 20l. Ditto, S. 5.

This act ſhall continue five years from the 24th of *June*, 1736, and to the end of the next ſeſſion of parliament. Ditto, S. 10.

Continued till the 1ſt of June, 1747, *and until the next ſeſſion of parliament, by* 15 *and* 16 Geo. II.

Confirmed by 19 *Geo.* II. p. 457. And it is there alſo enacted, that from the 24th of *June*, 1746, every maſter of a veſſel belonging to a ſubject, navigated with, or having any foreign-made ſails aboard, ſhall at the time of his making his entry at the cuſtom-houſe of ſuch veſſel, alſo make entry and report upon oath of all foreign-made ſails uſed in, or being aboard ſuch veſſel, and before the veſſel ſhall be cleared by the officers of the cuſtoms inwards, where ſhe ſhall diſcharge any of her lading, he ſhall pay the like duties payable by an act of 12 *Anne*.

Every ſuch ſail ſhall be ſtamped at the place where the veſſel ſhall make her entry, in manner herein aforementioned; and if the maſter ſhall not make ſuch entry, and pay the duty before the veſſel ſhall be cleared by the officers of the cuſtoms inwards, all ſuch ſails ſhall be forfeited, and the maſter for every ſuch offence ſhall forfeit 50l.

If the maſter after his report or entry made, and before the veſſel is cleared by the officers of the cuſtoms, ſhall declare his intention of not chooſing to pay the duty, and ſhall deliver ſuch ſails to the officer of the port where he makes his entry, in ſuch caſe the ſails are to be forfeited, and the maſter ſhall not be liable to pay the duty or penalty of 50l. Page 458.

Nothing herein contained ſhall make captains or maſters of veſſels, coming from the *Eaſt-Indies*, liable to the duties or forfeitures aforeſaid, for ſuch veſſels being navigated with, or having foreign-made ſails on board, which ſhall *bonâ fide* be brought by them from thence.

The commiſſioners of the cuſtoms of *Great-Britain*, by the 24th of *June*, 1746, ſhall provide a ſufficient number of ſtamps of eight inches diameter for the ſtamping of foreign-made ſails, &c.

And as doubts have ariſen about the meaning of a clauſe in the ſaid act of 9 *Geo.* II. by which veſſels are obliged at their firſt ſetting out, or being firſt navigated at ſea, to be furniſhed with one full and complete ſet of ſails, made of ſail-cloth manufactured in *Great-Britain:* to obviate ſuch doubts for the future, it is enacted, that from the 24th of *June*, 1746, every veſſel which ſhall be built in *Great-Britain*, and from the 29th of *December*, 1746, every veſſel which ſhall be built in his majeſty's plantations in *America*, upon her firſt being navigated, ſhall be furniſhed with one full and complete ſet of ſails *bonâ fide* belonging to ſuch veſſel, &c.) made of ſail-cloth manufactured in *Great-Britain*, under penalty, for every default, of 50l. to be forfeited by the maſter. 19 *Geo.* II. P. 462.

All

All the foregoing recited acts, relative to *Britiſh* made and foreign ſail-cloth, are continued, and to remain in force, until the 29th of *September*, 1792; and from thence to the end of the then next ſeſſion of parliament. 26 *Geo.* III. c. 53. S. 3.

If any ſubject of this realm ſhall ſhip any ſalt or rock ſalt, that hath paid the duty to convey it by ſea to any part of *England*, and the veſſel periſh at ſea, or be taken by enemies with ſuch ſalt on board, ſuch perſon ſhall, upon proof made at the quarter ſeſſions for the county, &c. wherein he doth inhabit, of the loſs of ſuch ſalt, receive from the ſeſſions a certificate, and upon producing the certificate to any officers of the duty having been paid, they are to let ſuch perſons ſhip the like quantity of ſalt without paying any duty. 5 and 6 *Will.* and *Mar.* C. 7. S. 21.

Where any ſhip laden with ſalt ſhall be found hovering on the coaſts, not proceeding on her voyage, it ſhall be lawful for the officers of the cuſtoms, or of the duty on ſalt, to go on board ſuch veſſels, and compel them to come into port, and to continue on board until the ſalt be unladen, or the ſhip ſhall depart from the port; and if the perſons on board any ſhip importing ſalt, ſhall neglect to enter or unlade ſuch ſalt twenty days after the ſame is come into port, or within that time to depart and proceed on their voyage, unleſs permitted by the chief officer of the cuſtoms, to make a longer ſtay, all the ſalt on board ſuch ſhip ſhall be forfeited, and double the value thereof, to be recovered of the maſter. 1 *Ann.* St. 1. Cap. 21. S. 7.

No foreign ſalt ſhall be imported in any ſhip of leſs burthen than twenty tons, and in bulk only (except for the proviſions of the ſhips) upon pain of forfeiting the ſalt, and double the value, to be recovered of the perſon importing. Ditto, S. 8.

If any ſhip laden with ſalt, to be carried beyond the ſeas, ſhall come into any place in *England*, it ſhall be lawful for the officer of ſalt, to enter ſuch ſhip, and there continue till the ſhip unlade her cargo, or return to ſea, under the penalty of 20l. to be recovered of the maſter, who ſhall refuſe ſuch officer to come on board; and if any perſon ſhall unlade any of the ſalt before entry or re-payment of the duty, the whole cargo of ſalt ſhall be forfeited. Ditto, S. 12.

Where any ſalt ſhall be laid on board any ſhip, either to be tranſported beyond the ſeas, or carried coaſtwiſe, the officer of the cuſtoms ſhall in the cockets (which ſhall be alſo ſigned by the officer for the duty on ſalt, and given without fee) expreſs the quantity of ſalt; and in caſe ſuch ſhip ſhall come into any port in *England*, it ſhall be lawful for the officers of the cuſtoms or officers for the ſaid duties, to go on board ſuch ſhip, and demand a ſight of ſuch cocket, and in caſe he has cauſe to ſuſpect that there is not ſo much ſalt on board as the quantity expreſſed from ſuch cocket (and ſhall make affidavit thereof before the collector, or cuſtomer of the port) to weigh all the ſalt remaining on board; and in caſe there ſhall appear not to be ſo much as the quantity expreſſed in ſuch cocket (making allowance for the waſte, and for ſalt delivered at another port, and indorſed in the permit) the ſalt remaining ſhall be forfeited. Ditto, S. 13.

No ſalt of the produce or manufacture of *England*, *Wales*, *Berwick*, *Scotland*, or *Ireland*, nor any other ſalt coming from *Ireland*, *Scotland*, or the *Iſle of Man*, ſhall, after *June* 1, 1704, be imported into *England*, *Wales*, or *Berwick*, upon pain that all the ſalt ſo imported, &c. ſhall be forfeited, and that the ſhip ſhall alſo be forfeited; and every perſon that ſhall take any ſalt out of ſuch ſhip, or carry the ſame on ſhore, or convey the ſame from the ſhore, or be aſſiſting therein, ſhall forfeit 20l. or ſuffer ſix months impriſonment. 2 and 3 *Ann.* Cap. 14. S. 1.

It ſhall be lawful for any of the officers for the duties upon ſalt, within two months after the landing any ſuch ſalt, to ſeize the ſalt, and alſo the ſhip; and in caſe the owner of ſuch ſalt or ſhip ſhall not within twenty days claim the ſalt and ſhip, and give ſecurity to anſwer the value, the ſalt and ſhip ſhall be ſold. Ditto, S. 2.

Nothing in this act ſhall extend to any ſalt ſhipped to be carried coaſtwiſe, by certificate, from one port to another, according to former acts. Ditto, S. 3.

In caſes where ſalt ſhall have been ſhipped to be exported, and the ſhip ſhall by ſtreſs of weather, enemies, or other neceſſities, be forced into any port in *England*, it ſhall be lawful for the owner of ſuch ſalt, or maſter of ſuch ſhip, within twenty days, to reland the ſalt, ſo as due entry be made, and the duties again paid down for the whole quantity that was entered to be exported before any part thereof be relanded. Ditto, S. 4.

Where any ſhip ſhall come into any port of *England*, from *Ireland*, or other foreign part, having on board any ſalt which was taken in only for the proviſion of the ſhip, or for curing of fiſh, it ſhall be lawful to land the ſalt, ſo as entry be made thereof within ten days after coming into port, and the duties paid down or ſecured before any part thereof be landed. 2 and 3 *Ann.* Cap. 14. S. 6.

Where any ſalt (the duties whereof ſhall have been paid or ſecured) ſhall be ſhipped and periſh by the ſinking of the ſhip, before going out of port, and before the exporter ſhall be intitled to a drawback; the exporter or proprietor of the ſalt ſhall, upon proof made before the juſtices at the next quarter ſeſſions, receive a certificate to ſuch proof, and upon producing it to any collector of the duties, he ſhall let the proprietor buy the like quantity of ſalt without paying duty. Ditto, S. 10.

Or if any ſalt is loſt at ſea by ſtormy weather, or by being thrown over-board for the ſhip's preſervation, the owner thereof ſhall, upon proof by the oaths of two (whereof the maſter or mate of the veſſel to be one) receive a certificate as above, and be allowed to buy the like quantity of ſalt without duty. Ditto, S. 18.

If any maſter of a ſhip, who ſhall import into *Great-Britain* any ſalt taken in for the proviſions of the ſhip, or for curing fiſh, ſhall not enter and pay, or ſecure the duty for the ſame within ten days after coming into any port, and before the ſame be landed, the ſalt ſo imported ſhall be forfeited, and the maſter or owner ſhall forfeit double the value. 15 *Geo.* I. C. 18. S. 18.

Every maſter of any veſſel, who ſhall tranſport any foreign ſalt from *Scotland*, or any of the Iſlands thereof belonging to *England*, or from one port to another in *Great-Britain*, ſhall, before landing or delivering ſuch ſalt, deliver to the officers for collecting the duties on ſalt a particular of the quantity, ſigned by the officers of ſalt and cuſtoms for the port whence the veſſel came, and the maſter, his mate, or boarſwain, ſhall make oath, before the commiſſioners for the ſalt duties, or their officers, that to his knowledge there hath not been taken into the veſſel any ſalt ſince he came from ſuch port: And if ſuch veſſel be to deliver part of her ſalt at one port, and part at another, the officers of the ſalt duties, and of the cuſtoms, where ſuch ſalt ſhall be delivered. ſhall certify on the back of the cocket or *Tranſire*, or elſe by certificate, what quantity of the ſalt hath been delivered, on penalty of double the value of the ſalt otherwiſe delivered, and 10s. *per* buſhel. Ditto, S. 20.

It ſhall be lawful for the ſalt officers at any unlading port to go on board ſuch veſſel, before the delivery, and demand a ſight of the cocket, and to weigh the ſalt upon the unlading; and if the ſalt be found to be more in weight than what is contained in the cocket, the ſurpluſage ſhall be forfeited, and if the maſter refuſes to ſhew the cocket, the officer may ſeize the ſalt, and detain it till the cocket be produced; and if it be not produced in four days, the ſalt ſhall be forfeited. Ditto, S. 21.

The officers of the cuſtoms, or of the duties on ſalt, may go board any veſſel to ſearch if there be any ſalt on board, and may ſeize the ſame, if it be found on board any other veſſel than that in which the ſalt was imported, unleſs it had been duly entered, or the duties paid or ſecured; and all ſuch ſalt ſhall be forfeited, or the value thereof to be recovered of the maſter or owner of ſuch veſſel, who ſhall likewiſe be liable to all other penalties, as if the ſame had been landed, without entry or payment of the duties; and every perſon who ſhall hinder any officer in going on board any veſſel and ſearching, ſhall forfeit 40l. Ditto, S. 22.

If any foreign ſalt be put on ſhore before entry or the duty paid, or without a warrant, the perſon landing the ſame, or conveying it from the ſhore, or aſſiſting therein, ſhall over and above the penalties already given, forfeit 100l. Ditto, S. 24.

On reſhipping any ſalt, *Britiſh* or *Foreign*, from any boat into any ſhip, and before any diſpatches for the ſalt ſo reſhipped be granted, the maſter, &c. that comes along with the ſalt to be ſhipped on board another veſſel, ſhall make oath before the ſalt officer, that all the ſalt he took in is truly reſhipped, and that there was no ſalt added to it, or taken from it, to the beſt of his knowledge, on penalty of forfeiting double the value of the ſalt, that ſhall be otherwiſe reſhipped, and alſo 10s. *per* buſhel. Ditto, S. 25.

Salt landed without the preſence of any officer, is forfeited, with 10s. *per* buſhel; and the veſſel out of which it ſhall be taken, with the tackle and furniture are forfeited; and every perſon concerned therein ſhall forfeit 20l. 5 *Geo.* III. C. 43. S. 40

Officers for the duty of ſalt, meeting any perſon conveying ſalt by land or water, by day or night, may demand a ſight of the permit, and may at their own expence weigh the ſalt; and if it be found more in weight than contained in the permit, the ſurpluſage ſhall be forfeited; and the perſons conveying the ſame ſhall be liable to the ſame penalties and forfeitures, as perſons are liable to for removing ſalt without due entry. 5 *Geo.* III. C. 43. S. 41.

Perſons obſtructing or abuſing officers, in the execution of their duty, ſhall forfeit 20l. for every offence. Ditto, S. 42.

Salt may be imported from any part of *Europe* to *Nova Scotia*: It may alſo be imported into *Quebeck*. 2 *Geo.* III. C. 24. 4 *Geo.* III. C. 19.

This act continued and to be in force, until *June* 24, 1790; and from thence to the end of the then next ſeſſion of parliament. 26 *Geo* III. C. 53.

The throwing of ſilk is not a manufacture within the intention of the act of navigation, 12 *Car.* II. Cap. 18. and no thrown ſilk of the growth or production of *Turkey*, *Perſia*, *Eaſt-Indies*, or *China*, or of any country or place, (except only ſuch thrown ſilk as ſhall be of the growth, or production of *Italy*, *Sicily*, or of the kingdom of *Naples*, and which ſhall be imported in ſuch ſhips, and navigated in ſuch manner as in the act is directed, and brought from ſome of the ports of thoſe countries, whereof the ſame is of the growth or production, and which ſhall come directly by ſea, and not otherwiſe) ſhall be imported into *England*, &c. upon the forfeiture of all thrown ſilk imported contrary to this act. 2 *Will.* and *Mar.* Stat. I. C. 9. S. 2.

No foreign wrought ſilks or velvets ſhall be imported into *Great-Britain*, the Iſlands of *Jerſey*, *Guernſey*, *Alderney*, *Sark*, or *Man*, on forfeiture; and the further penalty of 100l. to be paid by the importer, for each piece or remnant, with coſts of ſuit. 6 *Geo.* III. C. 28. S. 1.

This is not to extend to *Eaſt-Indian* ſilks or velvets; or to ſilks, crapes, or tiffanies, the manufacture of *Italy*. Ditto, S. 13.

Exportation of raw ſilk from *Ireland* incurs the forfeiture of the ſilk, together with that of the veſſel and furniture. 5 *Geo.* III. C. 29. S. 4.

The treaſurer, comptroller, ſurveyor, clerk of the acts, and commiſſioners of the navy, or one of them, on oath of one witneſs, that his majeſty's ſtores, &c. are conveyed into any ſhip, being at anchor, and not ready to ſail that tide, within any of the roads, harbours, &c. in his majeſty's dominions, may authoriſe any perſons by their warrant (in which the quantity and quality of ſuch goods ſhall be ſpecified) in the daytime to go on board ſuch ſhip, &c. and in caſe of reſiſtance to break open the hatches, &c. and ſearch for ſuch goods, &c. and ſeize the ſame for his majeſty's uſe, unleſs the ſaid officers and commiſſioners ſhall find, upon hearing of the matter, that they were unjuſtly ſeized, and thereupon reſtore them to the party. 1 *Geo.* I. C. 25. S. 5.

In caſe the maſter of any ſhip ſhall bring into this realm from *Ireland*, the *Iſle of Man*, *Jerſey*, *Guernſey*, or *Sicily*, or any of the foreign plantations, any rogue, vagabond, or beggar, or any other perſon likely to live by begging, being a native of any of the ſaid iſlands, or plantations, and the perſon ſo brought over ſhall be apprehended wandering and begging, or otherwiſe miſordering himſelf as aforeſaid, ſuch maſter, &c. ſhall forfeit 5l. for every rogue, &c. over and above ſuch money as ſhall be neceſſary to defray the charges that any conſtable ſhall be put to, by means of apprehending and re-conveying the perſon; and the conſtable or other officer of any pariſh where any perſon ſo brought over ſhall be found wandering and begging, or miſordering himſelf, may cauſe him to be apprehended, and openly whipt, and after put on board any ſhip, to be ſet on ſhore in the place from whence he was brought, paying for the paſſage back of ſuch perſon ſuch rate as the juſtices at their quarter ſeſſions ſhall appoint; and in caſe ſuch conſtable, &c. ſhall upon oath make appear before any juſtice of peace what expence he hath been put to upon ſuch occaſion, it ſhall be lawful for ſuch juſtice by order to direct the payment of the money ſo expended, as alſo of the penalty of 5l. and in caſe ſuch maſter, &c. of the ſhip ſhall neglect to pay the monies upon demand, it ſhall be lawful for ſuch juſtice, by warrant, to levy the ſame by diſtreſs, and ſale of the ſhip, or any goods within the ſame, while remaining within the juriſdiction of ſuch juſtice; and if the maſter of the ſhip ſhall be gone out of the juriſdiction, &c. the ſaid order of the juſtice may be removed by *certiorari* into the Queen's Bench, and being filed, the judges are required to direct proceſs for arreſting the ſhip, and detain-

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ing the ſame, until the monies mentioned in ſuch order, together with the charges of ſuch proceſs be ſatisfied, or otherwiſe to award proceſs for levying the monies by *capias*, *fieri facias*, or *elegit*, againſt the maſter or owners of the ſhip, as the court ſhall think proper. 12 *Ann.* C. 23. S. 2. S. 24.

Provided that in caſe ſuch maſter or owners ſhall in the ſaid court ſhew any probable ground of grievance by the ſaid order, they may be admitted to traverſe the ſame; giving ſecurity in the penalty of 50l. to anſwer the coſts of ſuch traverſe, in caſe it be determined againſt them. Ditto, S. 25.

All maſters of ſhips bound for *Ireland*, the Iſles of *Man*, *Jerſey*, *Guernſey*, or *Sicily*, ſhall, upon warrant to them directed by a juſtice of peace of the county, &c. where ſuch ſhip ſhall lie, take on board ſuch vagrants as ſhall be named in the warrant, and convey them to ſuch place in *Ireland*, the *Iſle* of *Man*, *Jerſey*, *Guernſey*, or *Sicily*, as ſuch ſhip ſhall be bound to, or arrive at; and for the charges thereof, the conſtable, or the perſon who ſerves him with the warrant, ſhall pay him ſuch rate as the quarter ſeſſions ſhall appoint, and ſuch maſter ſhall on the back of the warrant ſign a receipt for the money, and alſo for the vagrants; which warrant ſhall be produced to the juſtice who ſigned the ſame, and upon his allowance thereof, under his hand, the money ſhall be repaid by the county; and every maſter of ſuch ſhip, neglecting to receive or tranſport ſuch vagrants, or to endorſe ſuch receipt, ſhall forfeit 5l. to be levied by diſtreſs, or ſale of the ſhip, or any goods within the ſame, by warrant of any juſtice of peace for the ſame county, &c. S. 26.

Confirmed by 13 *Geo.* II. *p.* 478 and 479.

Maſters of ſhips knowingly importing foreign cut whale-fins or whale-bone, ſhall forfeit 50l. &c. 4 and 5 *Ann.* C. 12. S. 6. 12 *Car.* II. C. 32. S. 2.

Laws in Force prohibiting the Exportation of live Sheep, Wool, Woolfels, Yarn, Worſted, &c. and for the Encouragement and Security of the Woollen Manufactures of Great-Britain.

" THE laws and regulations formerly made and in force for preventing and pro-
" hibiting the exportation of live ſheep, rams, and lambs, wool, woolfels, mort-
" lings, ſhortlings, yarn, or worſted made of wool, woolflocks, cruels, coverlids,
" waddings, or other manufactures, or pretended manufactures, made of wool ſlightly
" wrought up, or otherwiſe put together, ſo as the ſame may be reduced to, and made
" uſe of as wool again; matraſſes or beds ſtuffed with combed wool, or wool fit for
" combing or carding, fuller's earth, fulling clay, tobacco-pipe clay, from and out of
" this kingdom, and the Iſles of *Jerſey*, *Guernſey*, *Alderney*, *Sark*, and *Man*, into foreign
" parts; having, in many reſpects, been found inſufficient to anſwer the good pur-
" poſes intended thereby; they are by this act repealed:" Except ſo much of an act, paſſed in the 9th and 10th of *William* III. intituled, *an act for the explanation and better execution of former acts made againſt tranſportation of wool*, &c. as relate to wool ſhorn, laid up, or lodged within ten miles of the ſea ſide, within the counties of *Kent* or *Suſſex*, or either of them, or to any perſon or perſons reſiding within fifteen miles of the ſea in the ſaid counties of *Kent* or *Suſſex*. And from and after the paſſing this act, all the powers, proviſions and regulations herein contained, reſpecting all or any of the before enumerated articles, goods or commodities, ſhall commence, take effect, and be in force, in ſuch manner as are herein after mentioned. 28 *Geo.* III. C. 38. 1788.

If any perſon or perſons whoſoever ſhall, from and after the paſſing this act, bring, deliver, ſend, receive, or take, or cauſe, or procure to be brought, delivered, ſent, received, or taken into any ſhip, veſſel, or boat, any rams, ſheep, or lambs of any ſort or deſcription whatſoever, of the breed of the kingdom of *Great-Britain*, or of the Iſles

of *Jerſey*, *Guernſey*, *Alderney*, *Sark*, or *Man*, being alive, to be carried or conveyed out of the ſaid kingdom, or any of the ſaid Iſles; the ſaid rams, ſheep, and lambs, and alſo the ſhip, veſſel, or boat, on board of which the ſame ſhall be taken, or received, ſhall become forfeited, and liable to be ſeized and ſecured, for the benefit of any perſon or perſons ſeizing the ſame; and every ſuch perſon and perſons ſo offending, his, her, and their aiders, abettors, procurers, and comforters, knowing thereof, and who ſhall be thereof convicted, ſhall, for every ſheep or lamb which ſhall be brought, delivered, ſent, received, or taken with any ſuch intent as aforeſaid, into any ſhip, veſſel, or boat, forfeit the ſum of three pounds, of lawful money of *Great-Britain*, and ſhall alſo ſuffer ſolitary impriſonment in the common gaol or houſe of correction of the county, riding, diviſion, or ſtewartry wherein ſuch offender or offenders ſhall be reſpectively convicted, for the ſpace of three months, without bail, or mainprize, and until ſuch forfeiture ſhall be paid; but the whole of the ſaid impriſonment for non-payment of the forfeiture, not to exceed twelve months. For a ſecond offence, the forfeiture to be five pounds for every ſheep, with ſix months impriſonment, and two years for non-payment of the forfeiture; but not to extend to carrying ſheep on board for the neceſſary proviſion of the maſter and mariners, and paſſengers of any ſhip or veſſel on her voyage. 28 *Geo.* III. C. 38. Sect. 2.

No live wether ſheep to be ſhipped on board any ſhip or veſſel, for neceſſary food or proviſion for the maſter, and mariners, or paſſengers, without a licence from the collector or comptroller of the cuſtoms at the port from whence they are ſhipped, ſpecifying the number of ſheep ſo taken on board, and they muſt be put on board in the preſence of the proper officers, appointed by the cuſtom houſe to attend for that purpoſe; under the penalty of twenty ſhillings for every ſheep, and forfeiture of the ſame. Sect. 3.

Where there is no officer at the ſhipping port, a licence muſt be obtained from the officers at the neareſt port. Sect. 4.

Not to extend to veſſels bound to, or from any place between the *Mull* of *Cantire* and *Cape Wrath* in *Scotland*. Sect. 5.

Nor to the removal of ſheep from the main land to Iſlands within the *Firths* of *Scotland*, where eſtates conſiſt of both. Provided always that the proprietors of ſuch eſtates, or their tenants ſhall give bond to the king, under the penalty of one hundred pounds, not to export ſuch ſheep and lambs to foreign countries, and ſhall take out a licence for ſuch removals, ſpecifying the names and ſituations of the iſlands, to and from which any ſheep are removed, and the names and places of abode of the owners. Sect. 6, 7, 8.

Perſons, who ſhall directly or indirectly carry, export, tranſport, or otherwiſe convey, or cauſe or procure to be conveyed, out of the kingdom of *Great-Britain*, or the Iſles of *Jerſey*, *Guernſey*, *Alderney*, *Sark* and *Man*, any wool whatſoever of the growth of the kingdom, or of the Iſles aforeſaid, or any woolfels, mortlings, ſhortlings, yarn, or worſted, made of wool, &c. &c. &c. and alſo all and every owner or owners of any ſhip, or veſſel, and the owners of any horſe or other beaſt of burthen, waggon, cart, or carriage, upon which any ſheep, wool, or other articles before enumerated, ſhall be exported, tranſported, carried, or conveyed, packed, or loaded, with an intent to be exported, knowing thereof, and being actually aiding, aſſiſting, or conſenting thereto; and alſo every maſter and commander, and mariner, of or in ſuch ſhip or other veſſel, wherein any ſuch wool or other articles aforeſaid, and which are hereby prohibited to be exported, ſhall be ſo exported, tranſported, carried, or conveyed, or loaden or laid on board as aforeſaid, with any ſuch intent or purpoſe, knowing thereof, and being actually aiding, aſſiſting, or conſenting thereunto; and alſo every factor or ſervant, or other perſon whatſoever, and every collector cuſtomer, comptroller, waiter, ſearcher, ſurveyor, or other officer or officers whomſoever, knowing thereof, and being actually aiding, aſſiſting or conſenting thereunto, and who ſhall be thereof convicted, ſhall forfeit and pay for the firſt offence, three ſhillings for every pound weight of ſuch wool, or other the aforeſaid enumerated articles, or the ſum of fifty pounds, in the whole, at the election of the perſon or perſons who ſhall ſue for the ſame; and ſhall alſo ſuffer ſolitary impriſonment in the common gaol, or houſe of correction of the county, wherein ſuch offender or offenders ſhall be convicted,

for the ſpace of three months, and until the penalty ſhall be paid, the whole impriſonment for non-payment of the penalty not to exceed twelve months. For the ſecond, or any ſubſequent offence, the ſame penalty to be incurred with ſix months impriſonment for the offence, and two years for the non-payment of the penalty. The penalties and forfeitures to be for the benefit of the perſons ſuing for the ſame; and the ſhip, veſſel, boat, cart, waggon, carriage, horſes, or beaſts, on which the ſaid articles are carried, or conveyed to be exported, ſhall be liable to be ſeized, and ſhall become forfeited, for the benefit of the perſon or perſons who ſhall ſeize the ſame. 28 *Geo.* III. C. 38. Sect. 9.

This clauſe not to extend to prohibit the exportation of tobacco-pipe clay to our ſugar colonies in the *Weſt Indies*, under the regulations of 17 *Geo.* III. continued by ſubſequent acts. Sect. 10.

Wool intended to be ſent coaſt-wiſe if it is carried to any ſea port, or other place on the ſea coaſt, or other woollen articles before enumerated, muſt firſt be entered with the proper officer of the cuſtoms, at the place from which it is intended to be conveyed to any other port or place in the kingdom, and a certificate of ſuch entry ſhall accompany it; otherwiſe, if found within five miles of the ſea coaſt, it ſhall be ſeized and forfeited, together with the waggon, carr, &c. conveying the ſame. Sect. 11.

The foregoing clauſe not to extend to wool carrying from the place of ſhearing to the owner's houſe, though within five miles of the ſea, provided the number of fleeces, and the place where it is to be houſed, be certified to an officer of the cuſtoms, at the port neareſt to the place where it is houſed; and that it be not removed from thence, or otherwiſe diſpoſed of, without notice given in writing, ſigned by the owner, to the officer or officers of the cuſtoms, of the intention to remove, or otherwiſe diſpoſe of the ſame. If there be no port within five miles of the dwelling houſe of the owner of the wool, the certificate, notice, &c. may be given to a juſtice of the peace, or any officer of his majeſty's revenue neareſt at hand. Provided alſo, that in caſe any ſheep ſhall be ſhorn between the *firſt* day of March, and the *firſt* of July in any year, for the ſole purpoſe of ſending them to market, it ſhall not be neceſſary for the owner to certify the quantity and quality of the ſaid wool ſo ſhorn, and where the ſame is houſed, until the general ſhearing for that ſeaſon of the whole of the flock or flocks of ſheep belonging to him is finiſhed for that ſeaſon, when he ſhall give an account of the quantity of wool, and the number of fleeces ſhorn from the whole. Sect. 12, 13, and 14.

It ſhall be lawful for any perſon or perſons authorized and qualified as is herein after mentioned, to ſeize, take, and challenge to and for his own uſe and benefit, all ſuch wool, woolfels, mortlings, ſhortlings, and other the aforeſaid worſted and woollen articles, fuller's earth, fulling-clay, and tobacco-pipe clay; as he, or they ſhall happen to ſee, know, or diſcover, to be brought, carried, or laid on ſhore, at or near the ſea, or any navigable river, to the intent or purpoſe of being exported or conveyed out of the ſaid kingdom of *Great Britain*, or out of the Iſles aforeſaid, contrary to the true intent and meaning of this act; and the offender or offenders therein ſhall be ſubject and liable to the like forfeiture, pains, and penalties, as perſons by this act are ſubject to for exporting, tranſporting, or ſhipping of wool, or the other commodities before enumerated. Sect. 15.

Wool for the only uſe and behalf of the inhabitants of the Iſles of *Jerſey*, *Guernſey*, *Alderney*, and *Sark*, may be exported from the port of *Southampton* only, under the following regulations; ſuch wool to be ſhipped on board ſhips or veſſels the owners whereof are at the time, actual inhabitants of the ſaid Iſles. And the perſon or perſons ſhipping the ſame ſhall deliver to the proper officers of the cuſtoms at the port of *Southampton*, a writing under the hand and ſeal of the governor or deputy-governor of the ſaid Iſlands reſpectively, ſpecifying the quantity of tods of wool to be exported; that the ſaid wool is to be uſed and manufactured in one of the ſaid Iſles, or in ſome of the dependers or parts of the ſame; and that the party named therein is properly authorized and appointed to export, or cauſe the ſaid wool to be exported, and has given bond to the king for the landing of the ſame in manner aforeſaid. Sect. 16, 17, and 18.

The quantity to be exported annually from the ſaid port of *Southampton* to the ſaid Iſles, in any one year, accounting from the *firſt* day of *January* laſt paſt, to the *firſt* day of *January* in every ſucceeding year, ſhall not exceed the quantity hereunder ſpecified; that

that is to ſay, unto the Iſle of *Jerſey* four thouſand tods of uncombed wool, and no more; and to the Iſle of *Guernſey* two thouſand tods; and to the Iſle of *Alderney* four hundred tods, and to the Iſle of *Sark* two hundred tods; each tod of the ſaid uncombed wool, not exceeding thirty two pounds in weight. And the governors or their deputies, (for whom they ſhall anſwer) ſhall not ſign any writing authoriſing the exportation to the ſaid Iſles of any more than the quantities ſpecified as above. Alſo it is enacted that if any cuſtom-houſe officer at the port of *Southampton* ſhall permit more than the allowed quantities to be ſhipped for the ſaid Iſles, he ſhall forfeit 500l. and be diſcharged from his office. And if the governor or deputy-governor of any of the ſaid Iſles ſhall give, grant, or make out any licence or licences for exporting more than the aforeſaid quantities, he or they ſhall forfeit 20l. for every tod of wool, ſo licenced to be exported, over and above the proportions of wool in and by this act, or the true meaning thereof, limited or appointed. One moiety of the aforeſaid forfeitures to be for the uſe of his majeſty; and the other moiety for the benefit of the perſon or perſons ſuing for the ſame. One ſhilling, and no more ſhall be paid to the clerks, officers, or ſervants of the governors for ſigning, ſealing, and entering each licence into books to be kept for that purpoſe.

No wool nor any of the woollen articles before enumerated to be ſhipped but in ſhips, veſſels, or boats belonging to natural-born ſubjects reſident in *Great-Britain*. Provided always, that this act ſhall not extend to any lamb-ſkins ready dreſſed and prepared, fit and uſeful for fur, or linings. 28 *Geo.* III. C. 38. Sect. 19.

Repeals ſo much of the act of 9 and 10 *William* III. c. 40, as prohibits perſons reſiding within fifteen miles of the ſea, in the counties of *Kent* and *Suſſex*, from ſelling their wool to other perſons reſiding at the ſame diſtance from the ſea, under the penalty of forfeiture; and enacts the free ſale of the ſame within the ſaid diſtances, upon giving the notices of houſing, and removal, according to the true intent and meaning of Sect. 12 of this act. Sect. 20.

Wool laid up, or lodged within *ten* miles of the ſea, within the aforeſaid counties, may be carried to any town, field, or place, where a regular and eſtabliſhed fair ſhall be held for the ſale of wool. Provided always that a permit or permits ſhall be taken out, from the proper offices, previous to the removal of ſuch wool, ſpecifying the quantity to be removed. The purchaſers of the wool, ſold at ſuch fairs, ſhall produce a permit of the quantities purchaſed, to the proper officers attending the fair, who ſhall grant a freſh permit for the removal of the ſame from the ſaid fair. And the wool, remaining unſold, ſhall be returned to the houſe or place from whence it was taken; and ſhall become ſubject and liable to the ſame rules, reſtrictions, and laws, as it would have been, in caſe it had never been moved, or taken to any fair as aforeſaid. Perſons counterfeiting certificates, licences, or permits, to forfeit twenty pounds, to any perſon ſuing for the ſame. Sect. 21, 22, 23, 24.

Wool, or any of the before ſpecified woollen or worſted articles, removed or carried towards the ſea, within *five* miles of the coaſt, upon any pretence whatever, between ſun-ſetting and ſun-riſing, ſhall be forfeited; and may be ſeized, together with the horſes, waggon, cart or carriage, for the benefit of the perſon or perſons ſeizing the ſame. And the driver or drivers, upon conviction, ſhall be committed, for one month to the houſe of correction. But this clauſe not to extend to the removal of wool ſhorn that day, from the ſhearing place to the dwelling or ſtore-houſe of the farmer or grower, although ſuch removal ſhall be towards the ſea and within *five* miles of the coaſt thereof. Sect. 25, 26.

Worſted yarn not exceeding 14lb. prepared for knitting, may be carried to retail ſhops, provided it is directed to the retailer to whom it is carried, and marked according to the directions of the act or acts of parliament requiring the marking thereof. Sect. 27.

No wool, mortlings, ſhortlings, wool-flocks, worſted bay, or woollen yarn, ſhall be packed up in any other package otherwiſe than packs or truſſes of leather or canvaſs, commonly called *pack cloths*, or in linen or woollen; and all ſuch packs or truſſes of leather, canvaſs, linen, or woollen, ſhall be ſtamped or marked on the outſide thereof with the word *wool*, in large characters, not leſs than three inches in length; on for-

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eiture, for neglect of the ſame, of all ſuch wool, or other the aforeſaid articles, to the erſon or perſons ſeizing the ſame; and alſo upon forfeiture, by the perſon or perſons o whom ſuch wool or other aforeſaid articles ſhall belong, of any ſum or ſums of mo-ey, not exceeding one ſhilling for every pound weight of ſuch wool, or other the afore-aid articles ſo ſeized, to the perſon or perſons ſeizing the ſame, as the court or juſtices efore whom ſuch wool, or other the aforeſaid articles ſhall be condemned, ſhall direct: ut this clauſe not to extend to worſted yarn packed in paper, according to the regu-ations of Sect. 27. Juſtices are authorized to order any wool, &c. ſeized for not being tamped or marked, to be returned to the owner or owners; but they ſhall not in any aſe, mitigate the penalty below *ſixpence* for every pound weight. Sect. 28, 29, o, 31.

Wool or other the aforeſaid woollen or worſted articles, not being packed according o the regulations of this act, ſhall be forfeited, together with a penalty of *three* ſhil-ngs for every pound weight. And perſons packing wool, &c. contrary to this act, r aſſiſting therein, ſhall be ſubject and liable to all the penalties incurred by exporters f wool, and the other articles prohibited to be exported. But perſons aſſiſting in ſuch legal package, giving information of the maſter-packers, or maſter-packers diſcover-ng their employers, ſhall be intitled to the wool, &c. ſo ſeized and condemned; and he employers alone ſhall be liable to the penalties on exporters of wool.

And whereas great quantities of wool are frequently lying at the publick wharfs n different ports of *Great-Britain*, which wool being under no control of the commiſ-oners of the cuſtoms, or their officers, evil diſpoſed perſons may, in the night-time, ut the ſame on board veſſels ready for ſailing to foreign parts; and alſo in many caſes, here wool is regularly entered to be put on board veſſels bound coaſtways, it is eaſy o put on board ſuch veſſels in the night-time, a larger number of packs of wool than ave been duly entered for that purpoſe, and which, by being concealed under ſuch acks as have been duly entered, cannot eaſily be diſcovered, and which wool may, fter the ſaid ſhips have proceeded ſome way on their intended voyages, be put on oard other veſſels bound to foreign parts; for remedy thereof, it is enacted, that very perſon or perſons who ſhall keep any wharf for the reception of wool, in or at ny *port of Great-Britain*, ſhall enter into a bond to the uſe of the king's majeſty, his eirs and ſucceſſors, under the penalty of *two hundred pounds*, not to ſhip any wool legally; and to keep a regular entry and account of the quantity of bags or cloths of ool by them received and delivered; with the time when, and the names and reſi-ence of the perſons from whom ſuch wool was ſo received; and to whom ſuch ool was ſo delivered, with the marks and numbers upon the ſheets, and the weight f ſuch wool; a copy of which account ſhall be delivered to the principal officers of he cuſtoms, at the port at which ſuch wharfingers ſhall reſide, at the end of every *ſix* onths, and oftener, if the ſame ſhall be required by ſuch officers. And if any harfinger ſhall refuſe to enter into ſuch bond, within *ſix* months after the paſſing of his act, or hereafter within one month of any perſon or perſons beginning to keep ny ſuch wharf, they ſhall forfeit and pay the ſum of *two hundred pounds*, to the per-n or perſons who ſhall ſue for the ſame; and in caſe ſuch wharfinger or wharfingers hall refuſe to keep and deliver the accounts above required to be kept and delivered, ſhall be convicted of keeping or delivering a falſe account, every ſuch wharfinger hall, for every ſuch offence, forfeit and pay the ſum of *fifty pounds*, to be paid to the erſon or perſons ſuing for the ſame; and the informers againſt wharfingers ſhipping ool illegally ſhall, upon their conviction, be intitled to *forty pounds*, for every offen-er. Wharfingers ſhall give an account to the proper officer, of any wool received land carriage, or inland navigation, within ſeven days after the receipt thereof, der the penalty of *ten pounds* for every neglect. 28 *Geo.* III. C. 38. Sect. 32, 33.

And the better to prevent any fraudulent exportation of wool, or any of the be-re mentioned woollen or worſted articles prohibited by this act, to be exported, un-r the pretence of carrying the ſame coaſtwiſe in the kingdom of *Great-Briain*; no ool nor any of the ſaid articles ſhall be put on board any ſhip, veſſel, or boat, to be car-d coaſtwiſe, or from one port to another, unleſs notice be firſt given to the commiſ-ners or chief managers of the cuſtoms, or to the cuſtomer, or collector and comp-ller of the cuſtoms, at the port from which the ſame is intended to be ſent, of the quantity,

quantity, quality, and package, together with the marks, numbers, and weight thereof, with the name of the ſhip, and maſter or commander, on board of which ſuch goods are to be laden, together with the name or names of the owner or owners of the ſaid goods, and the place of his or their abode or habitation, and the place and port at which the ſame are intended to be landed, and the name of the perſon or perſons to whom the ſame are conſigned; and alſo unleſs a bond be firſt entered into to the uſe of the king's majeſty, his heirs and ſucceſſors, by two good and ſufficient perſons, in treble the value of the ſaid goods ſo intended to be carried coaſtwiſe, that the ſame ſhall (the danger of the ſeas excepted) be landed accordingly, which ſaid bond ſhall be executed by the owner or owners of the ſaid goods, or ſome perſon or perſons by him, her, or them, appointed to execute the ſame, and which execution ſhall be deemed to be the act of ſuch owner or owners, or ſhipper or ſhippers thereof; which ſaid ſhipper or ſhippers, if acting as agent, or having ſold ſuch goods to any perſon or perſons, ſhall and may ſue for and recover, of or from the proprietor or proprietors of the goods ſo ſhipped, all ſuch ſum and ſums of money as ſuch ſhipper or ſhippers ſhall or may pay, expend, or be put unto, without their wilful default or negligence, for or by reaſon of his, her, or their entering into ſuch bond or bonds; and in caſe any ſuch bond or bonds ſhall be ſo entered into for any wool, or any other the articles aforeſaid, being the property of different perſons, then ſuch owner or owners, or perſon or perſons for whoſe account ſuch bond was ſo entered into, ſhall be accountable for his, her, or their ſhare of the money ſo expended, in proportion to the amount of ſuch goods ſo ſhipped; and alſo unleſs a licence be firſt taken out under the hands of the commiſſioners or chief managers of the cuſtoms for the time being, or any three of them, or from the cuſtomer, or collector and comptroller of the cuſtoms where any ſuch bond was given, for the lading, carrying, and landing thereof, as aforeſaid, which licence they are hereby required to grant without any fee or reward, or any other charge, to the perſon demanding the ſame. And if any wool, &c. be not ſhipped to be carried coaſtwiſe according to the directions of this act, it ſhall be forfeited, together with the ſhip, veſſel or boat, and all the guns, ammunition, tackle, apparel, and furniture belonging thereunto. 28 *Geo.* III. C. 38. Sect. 34.

Wool, the produce of any of the *Iſlands* of *Scotland*, may be carried from one part to another of the *Lochs*, or from the *Iſlands*, to the main land of *Scotland*; and ſhall not be ſubject to the reſtrictions and regulations contained in the foregoing ſections of this act, reſpecting the carrying of wool coaſtwiſe. Provided always that this exemption ſhall not authoriſe the carrying ſuch wool, and other the aforeſaid recited articles to open ſea, but under ſuch reſtrictions and regulations, as are herein for that purpoſe mentioned and expreſſed. Sect. 35.

The cuſtomer, or collector and comptroller of his majeſty's cuſtoms at the port where any wool, &c. is ſhipped to be carried coaſtwiſe, ſhall, immediately on the clearance of ſuch ſhip at ſuch port, tranſmit a notice in writing, ſetting forth the quantity, quality, and package of ſuch wool, &c. together with the marks and numbers thereof, the name of the ſhip, and of the maſter or commander thereof, to the cuſtomer, or collector and comptroller of the cuſtoms at the port to which ſuch wool, &c. are intended to be conveyed; under the penalty of *ten* pounds, to be paid by the officer neglecting to tranſmit ſuch notice, to the perſon who ſhall inform againſt ſuch officer. And the bonds herein-before directed to be given, on ſhipping the ſaid wool and other articles aforeſaid, ſhall not be diſcharged until a certificate under the hand and ſeal of the cuſtomer, or collector and comptroller of the port or place in *Great-Britain* where the ſame was landed, ſhall be produced to and left with the perſon or perſons in whoſe poſſeſſion ſuch bond ſhall be kept at the cuſtom-houſe of the port from whence the ſaid wool and other articles were ſhipped. And the proper officer at the port of landing is to tranſmit ſuch certificate within *ſeven* days after the landing thereof, to the proper officer at the port from whence they were ſhipped, under the penalty of *ten* pounds, to be paid by the officer neglecting to tranſmit the ſame, to the perſon or perſons informing againſt him. The collector or comptroller of the cuſtoms at the port, where ſuch wool, &c. is duly landed, ſhall grant and deliver another certificate to the maſter or commander of the ſhip from which the ſame ſhall be landed. If bonds are not diſcharged within ſix months, they ſhall

ſent to the commiſſioners of the cuſtoms; and if wool, &c. ſhipped at any port, ſhall not be landed at the place to which it is conſigned within a reaſonable time, notice thereof ſhall be tranſmitted to the officers of the cuſtoms at the port where it was ſhipped, who ſhall make proper enquiries without delay, in what manner the ſaid wool or other articles have been diſpoſed of. 28 *Geo.* III. C. 38. Sect. 36.

No wool, or any other the ſaid herein before enumerated articles, fullers earth, fulling clay, or tobacco-pipe clay, ſhall be ſhipped on board any ſhip or veſſel bound to parts beyond the ſeas, on any pretence whatſoever; under the penalty of forfeiture, for the benefit of the perſon or perſons who ſhall inform thereof, of all ſuch goods, and alſo of ſuch ſhip, veſſel, bottom or boat, on which ſuch goods ſhall be ſo laden, or put on board, and all the guns, ammunition, tackle, apparel, and furniture thereunto belonging. And, moreover, the maſter or commander of ſuch ſhip or veſſel, &c. ſhall, in ſuch caſe, be deemed the exporter thereof, and ſhall be ſubject and liable to the pains and penalties in ſuch caſe made and provided; unleſs ſuch maſter or commander ſhall and do, immediately upon his being apprehended, diſcover and make known the perſon or perſons who actually ſhipped ſuch goods, and enter into a recognizance with two ſufficient ſureties, before ſome juſtice of the peace for the county, city, borough, or place, in or at which ſuch laſt mentioned goods ſhall be diſcovered, to proſecute and give evidence againſt ſuch ſhipper, ſo as he may be convicted thereof. Sect. 37, 38, 39, 40.

Maſters of veſſels not regularly clearing out for foreign ports, as well as all perſons on board, privy to any illicit tranſaction againſt this act, ſhall be liable to all the pains and penalties of exporters of wool, &c. But any perſon on board, except the maſter, immediately on his, or her being apprehended giving information thereof, ſo as the maſter may be convicted, ſhall be intitled to a reward of *forty pounds*, and ſhall not be liable to the pains and penalties he or ſhe would otherwiſe have incurred.

Maſters of ſhips, &c and drivers of carts, &c. ſhall be exempt from puniſhment, or forfeiture of their veſſels, carts and horſes, if it is proved, from the ſmallneſs of the quantity that they were not privy to wool, &c. being on board, or in ſuch carriages, &c. But the wool, &c. ſo found on board, or laden on ſuch carriages, or beaſts of burthen, ſhall be forfeited to the perſon or perſons who ſhall find, diſcover, and ſeize the ſame.

The officers of the cuſtoms, at all the ports in *Great Britain*, ſhall keep a regiſter of all wool, &c. ſent coaſtwiſe, and tranſmit a copy thereof half-yearly to the commiſſioners of the cuſtoms at *London*; where the regiſter may be inſpected by any perſon or perſons whomſoever, on paying *one ſhilling*, and copies ſhall be tranſmitted annually to all the cuſtom-houſes in the kingdom, where they may be examined for the ſame fee. Sect. 41.

If wool ſhipped to be carried coaſtwiſe, be unpacked on board, the maſter of the veſſel ſhall forfeit *forty ſhillings* for every bag ſo unpacked, unleſs he makes oath before a juſtice of peace, upon his arrival at the delivering port, that it was done from abſolute neceſſity. Sect. 42.

Wool to be carried coaſtwiſe ſhall be ſhipped and landed in the preſence of an officer at the reſpective ports, and at lawful quays; under the penalty of forfeiture of the wool, and payment of *three ſhillings* for every pound weight. Cocquets and certificates for carrying the ſaid wool, &c. coaſtwiſe, to be written on paper, and not parchment, and ſigned by three or more of the chief officers of the ports of ſhipping and landing, and the exact weight of the wool (weighed in their preſence) ſhall be expreſſed therein, together with the marks, numbers, &c. Sect. 43, 44.

Perſons *inſuring* the conveyance of ſheep, wool, or other the before enumerated articles, to foreign parts, are liable to the ſame penalties as the exporters. Perſons paying for ſuch *inſurances* are liable to the like penalties, and to forfeit the articles inſured, to the perſon or perſons who ſhall ſue for the ſame. Any perſon concerned in ſuch inſurance, upon giving information to the commiſſioners of the cuſtoms, ſhall be acquitted of the offence, and ſhall have the ſheep, wool, &c. ſo inſured, for their own uſe and benefit. Alſo, if the informant be inſured, he ſhall receive back his inſurance money or premium, provided he is the firſt diſcoverer, and gives the information

within the ſpace of ſix months. And the policies of ſuch inſurances are declared to be null and void. 28 *Geo.* III. C. 38. Sect. 45, 46, 47, 48.

It ſhall be lawful for the maſter, or commander, or any other commiſſioned or deputed officer of any of his majeſty's ſhips or ſloops, in any port, creek, or road, or in the open ſeas, within the limits of the ſtation which ſhall be aſſigned to any ſuch ſhips or ſloops, and he is hereby required to enter and ſearch, or cauſe to be entered and ſearched, any ſhip, veſſel or boat; and if upon ſuch ſearch any ſheep, wool, or any other of the ſaid articles hereby prohibited to be exported, ſhall be found therein, and the maſter or commander of ſuch ſhip, veſſel or boat, ſhall not immediately produce a lawful cocquet or warrant, licenſing ſuch articles to be carried coaſtwiſe, or to the aforeſaid *Iſles*, or ſome of them, ſuch commander is hereby directed to take and ſeize ſuch ſhip, veſſel or boat, and to carry the ſame, together with the crew and cargo thereof into ſome port in *Great-Britain*, and there deliver the ſame into the cuſtody of the collector and comptroller of ſuch port. Sect. 49, 50.

And all the wool, and other the ſaid articles, ſo found and ſeized, ſhall be lodged in the king's warehouſe in ſuch port, into which the ſame ſhall be brought, and condemned according to law, and being ſo condemned ſhall be publickly expoſed to ſale, after *ſixty* days publick notice being given in writing at the cuſtom-houſe of the ſaid port, and on the *Royal Exchange* of *London*, by inch of candle, to the laſt and beſt bidder; and ſuch ſhips, veſſels or boats, that ſhall be ſo ſeized, and which are hereby declared to be forfeited, and which ſhall be condemned as aforeſaid, ſhall, together with all their guns, tackle, furniture and apparel, be expoſed to ſale in like manner; and the produce of the ſaid ſales, after deducting the expences of the proſecution and condemnation, ſhall be divided in manner following; that is to ſay, one *third* part thereof to the commander or commanders, one *third* to the officers of the ſhip or ſhips, ſloop or ſloops, that took the ſame, and the remaining *third* part to the mariners belonging to ſuch ſhips, &c. to be equally divided and paid amongſt the ſaid mariners by the collectors of the ſaid port, or ſuch perſon or perſons as ſhall be authoriſed to pay the ſame; and if ſuch ſeizure ſhall be made upon the information of any perſon or perſons, not being a mariner on board ſuch ſhips or ſloops, ſo appointed to cruize and ſearch, ſuch informer or informers ſhall not only be indemnified from the pains, penalties, and forfeitures, to which exporters of the aforeſaid prohibited articles, their aiders and abetters, are liable, but ſhall alſo receive one *third* of the produce of ſuch ſales, and the reſidue thereof ſhall be divided and diſtributed in manner as is before directed.

Every commander of ſuch ſhip or ſloop, neglecting his duty by this act required, ſhall loſe and forfeit all pay and wages due to him, and ſuffer ſix months impriſonment; and be for ever incapable of ſerving his majeſty in any office in the navy, cuſtoms, exciſe, or ſalt duties; and any perſon or perſons giving information againſt any ſuch commander for neglecting his duty, ſhall, on the conviction of ſuch offender, be intitled to receive the ſum of *forty pounds*, to be paid to ſuch informer or informers immediately after ſuch conviction, by the commiſſioner of the cuſtoms, exciſe, or ſalt duties, or other of his majeſty's revenue officers. Sect. 51.

In order to prevent colluſive ſeizures and agreements and fraudulent practices, it ſhall not be lawful for any perſon or perſons, (except an officer of his majeſty's cuſtoms, exciſe, or ſalt duties) who ſhall have cauſe to ſuſpect that any ſheep, wool, or any of the before enumerated articles, is or are carrying or conveying contrary to the directions and true intent and meaning of this act, to examine or ſeize ſuch ſheep, wool, &c. other than together and in company with a conſtable, or other officer of the peace, who are hereby required, on application being made to him or them, immediately to attend the perſon or perſons applying for ſuch aſſiſtance. And in caſe any ſuch conſtable or other peace-officer, upon application made to him for that purpoſe, ſhall neglect or refuſe to attend any perſon or perſons making ſuch application, every ſuch conſtable or other peace-officer, upon conviction thereof, ſhall forfeit and pay the ſum of *twenty pounds*, one moiety thereof ſhall go to the perſon or perſons ſuing for the ſame, and the other to the poor of the pariſh or place where the offence ſhall have been committed. Sect. 52, 53.

And

And to prevent any diſpute relating to the authority of any perſon or perſons, acting as officer or officers of the cuſtoms, exciſe or ſalt duties, in this kingdom, for putting in execution this act; be it further enacted, that every perſon who, by deputation, commiſſion, or other inſtrument, under the hands and ſeals of the commiſſioners of the cuſtoms, exciſe, or ſalt duties, in this kingdom, or the iſles aforeſaid reſpectively, ſhall be appointed to act as an officer or ſervant under them, for putting this act in execution, ſhall be eſteemed an officer of the cuſtoms, exciſe, or ſalt duties reſpectively, to all intents and purpoſes whatſoever. 28 *Geo.* III. C. 38. Sect. 54.

If any officer of the revenue, or any other perſon or perſons, ſhall, directly or indirectly, make any colluſive ſeizure, or information of any of the aforeſaid articles hereby prohibited from being exported; or any fraudulent or colluſive agreement whatſoever, whereby the owner or claimer thereof, their agents or ſervants, or any offender or offenders againſt this act, may avoid the forfeitures, penalties, and puniſhments, or any part thereof incurred or inflicted by this act; he, ſhe, and they ſhall, upon conviction, be ſubject to the like penalties as are herein-before directed to be incurred by the exporter of wool, &c. And perſons not concerned in ſuch colluſive ſeiſures or agreements, who ſhall *firſt* make a diſcovery thereof to the commiſſioners of the cuſtoms, ſhall be intitled to the benefit ariſing from the proceedings had thereon. And any perſon actually concerned in ſuch colluſive ſeizures or agreements, who ſhall *firſt* diſcover his offence to the commiſſioners of the cuſtoms, within three months after the ſaid offence ſhall have been committed, and ſo as one or more of his accomplices therein be convicted thereof, ſhall not only be acquitted and diſcharged thereof, but ſhall, as a further encouragement, have and receive the ſum of *forty pounds* to be paid by the commiſſioners of the cuſtoms on the conviction of ſuch offender or offenders; provided always that ſuch informer or informers be not an officer of his majeſty's revenue, or owner of the goods. Sect. 55.

Perſons oppoſing any perſon or perſons putting this act in execution, and obſtructing, moleſting, wounding or beating them, or going diſguiſed and armed with offenſive arms or weapons, and attempting to hinder the ſeizure of ſheep, wool, &c. carrying towards the coaſts, or actually put on board any ſhip, veſſel, or boat, to be exported contrary to the intent and true meaning of this act; or who ſhall reſcue, or attempt to reſcue, ſheep, wool, &c. which ſhall have been ſeized according to the directions of this act, by night or by day, by land or by water, ſhall, on conviction of any ſuch offences, be ſentenced by the court before whom they ſhall be tried, to be tranſported to ſome place beyond the ſeas, for ſuch term or terms as ſuch court ſhall think fit, not exceeding *ſeven years*; and if any ſuch offender or offenders ſhall return into *Great-Britain* before the expiration of the term for which they were tranſported, upon conviction thereof, they ſhall ſuffer death as felons. Sect. 56, 57.

Perſons offering, or promiſing bribes to cuſtom-houſe officers, or other perſons, to connive at, or permit the exportation or the concealment of any ſheep, wool, &c. or the removal thereof, contrary to the directions of this act, ſhall forfeit and pay the ſum of *three hundred pounds*, to be recovered and applied to the uſe of him, her, or them, who ſhall inform or ſue for the ſame, by action of debt, bill, plaint, or information in any of his majeſty's courts of record, at *Weſtminſter*. Sect. 57, 58.

Officers of the cuſtoms, exciſe, and ſalt duties, neglecting the duty by this act required, or compounding for any ſhip, veſſel, or boat, which are by this act directed to be forfeited, ſhall be deemed aiders and abetters in the exportation of ſheep, wool, &c. and ſhall ſuffer the puniſhment herein enacted againſt the exporters thereof.

Bonds taken, or to be taken, in purſuance of this act, ſhall not be chargeable with any of the duties upon ſtamped vellum, parchment, or paper; any law or ſtatute made, or to be made, to the contrary notwithſtanding. Sect. 59.

In all proſecutions for offences committed againſt this act, the proof that the ſheep, wool, &c. are not of the breed, growth, and produce of this kingdom, ſhall lie upon the defendant or defendants. Sect. 60, 61, 62, 63, and 64.

Proſecutions upon this, or upon the ſaid recited acts of 9 and 10 of *William* III. may be commenced in any of his majeſty's courts of record at *Weſtminſter*; or in the court of exchequer in *Scotland*; or in any court of *oyer* and *terminer*, great-ſeſſion, or gaol-delivery; or at the quarter-ſeſſion of the peace, or before any two juſtices of the peace for

for any county, city, or place, in the kingdom, in a ſummary way, at the election of the ſeizer or informer.

But no proſecution or information ſhall be had, commenced, or proceeded upon, before any *two* juſtices of the peace, in a ſummary way, where the ſeizure, penalty, or forfeiture, then claimed, ſhall exceed in the whole the ſum of *two hundred pounds.*

Juſtices aſſembled at any quarter-ſeſſion, and alſo ſuch aforeſaid two juſtices of the peace, are impowered to order all ſuch ſhips, veſſels, goods, carriages, and cattle, as ſhall be by them declared to be forfeited, and which ſhall have been ſeized by virtue of this, or the ſaid recited acts, to be publickly ſold to the higheſt bidder; and ſhall by their warrant or order levy the penalties and forfeitures incurred by any offender or offenders againſt this act, by diſtreſs and ſale of the goods and chattles of ſuch offender or offenders.

One clear moiety of the ſeizures, penalties, and forfeitures (except the penalties of the bonds) by this act directed to be inflicted upon offenders againſt the ſame (except ſuch as are by this act otherwiſe directed and applied) ſhall, when recovered, be paid and applied to ſuch perſon or perſons who ſhall give ſuch information to any officer of his majeſty's cuſtoms, exciſe, or ſalt duties, as may be the means of recovering the ſame; and after deducting the expences of recovering ſuch penalties, the remainder of the other moiety ſhall be paid to the officer or officers aſſiſting in making any ſuch ſeizures; but in caſe any officer or officers of his majeſty's cuſtoms, exciſe, or ſalt duties, ſhall make any of the ſeizures herein-before directed, without information, then after deducting the expences of recovery, the remainder of ſuch produce ſhall be paid to the officer or officers ſeizing the ſame.

It ſhall and may be lawful for all officers of his majeſty's cuſtoms, &c. conſtables and other officers of the peace; and all perſons acting in their, or any of their aid and aſſiſtance, to ſtop, arreſt, and detain all and every the perſon or perſons who ſhall be found actually exporting, or attempting to export any ſheep, wool, &c. or who ſhall be aiding, abetting, or aſſiſting in the exporting, or attempting to export the ſame; and him, her, or them, to carry and convey before one of his majeſty's juſtices of the peace, near to the place where the offence ſhall be committed; and the juſtice or juſtices, if he, or they ſee cauſe, ſhall commit the perſon or perſons ſo brought before him or them, to the county gaol or houſe of correction, until the next general quarter-ſeſſions of the peace, then to be tried, and dealt with as by this act is directed. 28 *Geo.* III. C. 38. Sect. 65, 66.

Perſons, conveying offenders ſo arreſted before juſtices of the peace, ſhall enter into recognizances, in the ſum of *forty pounds* to appear, and proſecute them at the next quarter-ſeſſions.

In caſe the goods and chattels of offenders are not ſufficient to pay the penalties incurred, juſtices of the peace may commit ſuch offenders to the common gaol, or houſe of correction of the county or place where the offence was committed, for three months, unleſs the whole of the penalty ſhall be ſooner paid. Sect. 67, 68.

But if an offender before his commitment to priſon can find two ſufficient ſureties for the payment of the penalty, he ſhall be admitted to bail; and in caſe of non-payment at the time ſtipulated, the offender and his ſureties, ſhall, and may be lawfully committed to the common gaol, for the ſame term of three months, or till the penalty and coſts be paid.

Appeals may be made from the deciſions of any juſtice or juſtices of the peace to the quarter-ſeſſions, if the offender gives notice in writing to the informer of ſuch appeal, and enters himſelf with two ſufficient ſureties into recognizances to appear and proſecute ſuch appeal, and to abide by the deciſion of ſuch court; and in caſe the judgment, determination, or conviction ſo appealed againſt, ſhall be affirmed, he ſhall pay double coſts, to be aſcertained by order of the ſame court. Upon every information to be made under this act, upon oath, juſtices of the peace are impowered to ſummon and examine witneſſes, who are hereby required to attend and give evidence accordingly. Sect. 69, 70, 71.

All actions and informations, which ſhall be commenced in virtue of this act in any of his majeſty's courts of record, ſhall be tried by a jury of good and lawful free-

holders,

holders, to be ſummoned out of any other county than that wherein the fact ſhall have been committed. 28 *Geo.* III. C. 38. Sect. 74, 75.

All proſecutions for offence againſt this act to be commenced within the ſpace of three years next enſuing the offence committed.

The firſt *three* perſons who have actually been concerned in exporting of ſheep, wool, or any of the articles before recited, who, after their return into the kingdom of *Great-Britain*, or within three months after their knowledge thereof, ſhall give information to any juſtice of the peace, whereby the puniſhment and penalties of this act may be inflicted or recovered, ſhall be exempt from the penalties and puniſhments they had incurred by aiding and abetting ſuch exportations; provided always, that the parties making ſuch diſcovery are not owners of the ſheep, wool, or other articles that have been exported. Owners of ſhips or veſſels, and the maſters, commanders, or mariners, who have been aiding or aſſiſting in loading any ſhip, veſſel, or boat, knowing of ſuch exportation, who upon their return ſhall give the firſt information thereof to the barons of the exchequer, or to the head officer of any port where they ſhall firſt arrive, or to any juſtice or juſtices of the peace, upon oath; and ſhall further enter into recognizances in the ſum of forty pounds each, with two ſufficient ſureties, perſonally to appear and give evidence of the ſame; then ſuch owners, maſters, commanders, and mariners ſhall not be liable to the penalties or forfeitures in this act; but ſhall be, and are hereby enabled to recover and receive ſuch benefit and advantage as is appointed to be received and allowed by this act, on conviction of ſuch offenders. Sect. 78.

And whereas an act of parliament was paſſed in the *twenty-third* year of the reign of king *Henry* the eighth; "*For the winding of wool*;" whereby it was enacted; that "from thenceforth no manner of perſon or perſons do wind, or cauſe to be wound, any fleece of wool being not ſufficiently rivered or waſhed; nor wind, nor cauſe to be wound, within any fleece, clay, lead, ſtone, ſand, tails, deceitful locks, cots, cols, comber, lamb's wool, or any other thing, whereby the fleece might be made more weighty, to the deceit and loſs of the buyer, upon pain, the ſeller of any ſuch deceitful wools to forfeit for every ſuch fleece, *ſix-pence*, the one moiety to the king, the other to the finder and prover of ſuch deceit." And it was provided in and by the ſaid act, that "the ſame act concerning rivering and waſhing of any wool, ſhould not in any wiſe extend to any ſhire or ſhires, the inhabitants whereof had not cuſtomably uſed before that time, to river or waſh their ſheep afore they were ſhorn, nor ſhould in any wiſe be hurtful or prejudicial to any perſon or perſons that had uſed cuſtomably to ſell their wool by tale or number of the fleeces, and not by weight; any thing in the ſaid act to the contrary notwithſtanding." Which ſaid ſtatute was made perpetual in and by another act of parliament, paſſed in the *thirteenth year* of queen *Elizabeth*, intituled, "*an act for reviving and continuance of certain ſtatutes*; and whereas the ſaid laws have not now the good effects thereby propoſed and intended, by reaſon of the ſaid penalty being ſo ſmall, and one moiety thereof being directed to be paid to the king, and the great expence attending the recovery of the ſame;" be it therefore enacted, that from and after the paſſing this act, every perſon and perſons offending againſt the ſaid laſt-mentioned acts, ſhall, in lieu of every *ſix-pence* which by the ſaid acts, or either of them, might be recovered, forfeit and pay the ſum of *two ſhillings*, the whole whereof ſhall be paid to the finder or prover of the above-mentioned deceits; and the offences againſt the ſaid acts, or either of them, from henceforth ſhall and may be proceeded upon, heard, and determined by and before any one juſtice of the peace, reſiding at or near the place where ſuch offence or offences ſhall be committed, in a ſummary way; and ſuch ſaid juſtice of the peace ſhall be, and he is hereby empowered to cauſe the reſpective perſon or perſons, againſt whom any ſuch information ſhall be laid, to be ſummoned at a certain time and place to be fixed by ſuch juſtice, and he is hereby authoriſed, empowered, and required, upon the appearance or default of ſuch perſon or perſons, to examine into, and give judgment in the premiſes. Sect. 79.

Juſtices are empowered to diſcharge ill founded complaints, if it appears to their ſatisfaction, that no fraud was intended; but that the clay, ſand, or earth, found on the fleeces, became mixed or connected with the ſame, by reaſon of the neceſſary paſturing, folding, or keeping of the ſheep, ſubſequent to the rivering or waſhing of them. The

penalties

penalties incurred for, or in reſpect of, the falſe winding of wool, or the ſelling or diſpoſing thereof, if not paid within three days after conviction, ſhall be levied by diſtreſs, by warrants under the hands and ſeals of the juſtices. 28 *Geo.* III. C. 38. Sect. 80, 81, and 82.

Perſons complained of for ſelling wool, deceitfully wound, may, if it was done without their privity, require the appearance of the perſon or perſons who wound the ſame, before the juſtices, who ſhall determine, with whom the offence lies, and act accordingly.

Perſons, thinking themſelves aggrieved by the deciſion of any juſtice of the peace, may appeal to the next quarter ſeſſions of the peace. But no conviction ſhall be ſet aſide for want of form, or through the miſtating of any fact, circumſtance, or other matter whatſoever; provided the material facts alledged in ſuch conviction, or judgment, and upon which the ſame ſhall be grounded, be proved to the ſatisfaction of the court. Sect. 83, 84.

And whereas by an act of parliament paſſed in the *twenty-ſeventh* year of king *Edward* the *third*, intituled, "The officers of the ſtaple and merchants repairing to it, ſhall be *ſworn to maintain the ſtaple and the laws and cuſtoms of it*," it was ordained, that a certain number of winders of wool, and other officers therein mentioned, be ſufficiently ordained for the place where the ſtaple is, and they and the correctors, and all manner of officers of the ſtaple, beſides the conſtables, ſhall be ſworn before the mayor of the ſtaple, that they lawfully ſhall execute their office, without fraud or deceit: And whereas all winders, now to be ſworn, do repair to the mayor of the ſtaple at *Weſtminſter*, for the purpoſe of being ſo ſworn, whereby the perſons ſo deſirous of being ſworn are ſubjected to great expence and inconvenience; be it therefore enacted, that it ſhall and may be lawful for the juſtices of the peace, who ſhall hereafter be aſſembled at any general quarter ſeſſions of the peace, within the kingdom of *Great-Britain*, or any adjournment thereof, and they are hereby empowered and required to adminiſter to every ſuch perſon as ſhall be deſirous of becoming a ſworn winder of wool, and ſhall produce a certificate under the hands of any two growers of wool, teſtifying to the ſatisfaction of ſuch juſtices, that ſuch perſon is properly qualified to become a ſworn winder of wool, an oath to the following purport and effect; (Sect. 85, 86.) that is to ſay,

> *I* A. B. *do ſwear that I will truly and juſtly, without deceit, wind and fold all and ſingular the wool which I ſhall take upon me to wind and fold, without leaving or putting any clay, lead, ſtones, ſand, tails, deceitful locks, lamb's wool, or any other thing, whereby the fleece may be made more weighty, to the deceit and loſs of the buyer; and that I will not uſe any other deceit, craft, guile, or fraud, in the winding or folding of any ſuch aforeſaid wool.* *So help me GOD.*

An entry of the adminiſtering and taking of which oath ſhall be made in the records of the ſaid ſeſſion, and a certificate thereof ſhall be delivered by the clerk of the peace, or other proper officer, to the perſon or perſons who ſhall have taken the ſame. Provided always, and be it enacted; that nothing herein contained ſhall be conſtrued to hinder or prevent any one from employing any perſon in winding or folding of wool, although ſuch perſon or perſons ſhall not have been ſworn in manner before mentioned.

No proſecution ſhall be commenced for any offences committed againſt any acts now in force, before the *firſt* day of *May*, 1788. And a general pardon is hereby extended to all perſons in priſon, and fugitives beyond the ſeas, for former offences. Alſo his majeſty's ſhare of fines now due, or which may become due in any proſecution now pending, ſhall be remitted; and all perſons againſt whom any proceſs of outlawry hath been ſued out, for the matters aforeſaid, may be at liberty to apply, by motion, to the court out of which ſuch proceſs iſſued, to ſet aſide, or reverſe the ſame. Sect. 87, 88.

If any perſon or perſons, who ſhall claim the benefit of this act, ſhall commence any proſecution againſt any officer of his majeſty's cuſtoms, exciſe, or ſalt duties, or againſt any perſon or perſons, who ſhall have been aiding and aſſiſting them, for any matter or thing done by them, by reaſon of any offence committed by the perſons claiming the benefit of this act; the officers or other perſons ſo proſecuted may plead the

the general iſſue, and give the ſpecial matter in evidence; and ſhall recover coſts of ſuit againſt the perſon or perſons ſo bringing or commencing ſuch action or proſecution. 28 *Geo.* III. C. 38. Sect. 89, 90. But,

Nothing in this act ſhall be conſtrued to extend to the diſcharge or releaſe of any ſeizures of ſheep, wool, &c. or of any ſhips, veſſels, boats, horſes, waggons, carts, &c. under any act or acts of parliament now in force againſt the exportation of live ſheep, wool, and the other before enumerated articles; nor to the diſcharge and releaſe or acquittal of any fines which have been actually levied, or may become due in conſequence of any ſuit now depending, to any officer or other perſon ſuing for the ſame under the directions of the ſaid act or acts.

Any action, ſuit, or information, that ſhall be commenced, brought and proſecuted on account of the ſeizure of any ſheep, wool, &c. or of any ſhip, veſſel, boat, cart, waggon, &c. or for any matter, cauſe, or thing done, or executed by virtue of this act, or any clauſe or article herein contained; ſhall be commenced within ſix months after the fact, and not afterwards; and ſhall be laid in the proper county where the fact was done or committed. And the perſon or perſons ſo ſued may file common bail, or enter a common appearance, and plead the general iſſue, not guilty; and may give this act, and the ſpecial matter in evidence at the trial; and that the ſame was done in purſuance and by the authority of this act. And if a verdict is given for the defendant or defendants, the plaintiff or plaintiffs ſhall pay *treble* coſts. But, though a verdict ſhall be given for the plaintiff or plaintiffs, they ſhall not be intitled to above *two* pence damages, nor to any coſts of ſuit, if the court or judge, before whom the cauſe was tried, ſhall certify on the ſaid record, that there was a probable cauſe for ſuch ſeizure; nor ſhall the defendant be fined above one ſhilling; but the effects ſeized ſhall be reſtored to the plaintiffs. Sect. 91.

Prohibits the exportation of *Britiſh* hare ſkins, *Britiſh* hair wool, and *Britiſh* coney wool. 24 *Geo.* III. C. 2.

No wool ſhall be ſhipped from *Ireland*, but from *Dublin*, *Waterford*, *Youghall*, *Kinſale*, *Cork*, and *Drogheda*. 1 *Wils.* and *Mar.* C. 32.

For every ſhip which ſhall ſail from *Ireland*, in order to export any of the commodities aforeſaid to this kingdom, bond ſhall be given by two known inhabitants of or near the place, to the chief officers of the cuſtoms belonging to the port in *Ireland*, in double the value of the goods, before the ſhip ſhall be permitted to lade any of the commodities aforeſaid, with condition, that if the ſhip ſhall take on board any of the ſaid goods in *Ireland*, all the ſaid goods ſhall be brought by the ſame ſhip to ſome port in *England* or *Wales*, and ſhall there be unladen, and pay the duties thereof (the danger of the ſeas excepted) and every ſhip which ſhall lade any of the ſaid goods, until ſuch bond be given, ſhall be forfeited as aforeſaid. 10 and 11 *Will.* III. C. 10. S. 5.

All ſuch goods, exported from Ireland into this kingdom or *Wales*, ſhall be ſhipped off at the ports of *Dublin*, *Waterford*, *Youghall*, *Kinſale*, *Cork*, and *Drogheda*, and from no other port; nor ſhall be imported into any parts of *England* or *Wales*, other than *Biddeford*, *Barnſtable*, *Minehead*, *Bridgwater*, *Briſtol*, *Milford-Haven*, *Cheſter* and *Liverpool*. Ditto. S 10.

It ſhall be lawful to import from any of the aforeſaid ports in *Ireland*, any wool, &c. into ſuch ports of this kingdom as aforeſaid; ſo as notice be firſt given to the commiſſioners of his majeſty's cuſtoms in this kingdom, or to the cuſtomer or collector in the ports to which the ſame is to be brought, of the quantity, quality, and package, with the marks and numbers thereof, the name of the ſhip and maſter, and the port into which they are to be imported, and ſo as bond be firſt entered into, to the uſe of his majeſty, with one or more ſureties, in treble the value of the goods, that the ſame ſhall (dangers of the ſeas excepted) be landed accordingly, and ſo as a licence be firſt taken, under the hands of the commiſſioners of the cuſtoms, or from the cuſtomer or collector, where ſuch bond is given for the landing thereof, which licence they are to grant without fee. Ditto, S. 14.

All actions and informations which ſhall be proſecuted, by virtue of any act, for preventing the exportation of wool, or woollen manufactures, from *Ireland*, ſhall be tried in any of the four courts at *Dublin*, by a jury of freeholders, to be ſummoned out of any other county, than that wherein the fact was committed; and the firſt three

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who have been aſſiſting in exporting of wool or woollen commodities, who ſhall inform any juſtice of peace thereof, whereby the puniſhment may be inflicted, ſuch diſcoverer (not being the owner or part-owner thereof) ſhall not ſuffer any of the puniſhment. 3 *Geo.* I. C. 21. S. 5.

All ſuch wool, and other the commodities mentioned in 10 and 11 *Will.* III. cap. 10. which ſhall be carried or laid on ſhore near the ſea, or any navigable river, to the intent to be exported out of *Ireland*, contrary to that act, ſhall be forfeited, and the offender ſhall be liable to the like penalties, as perſons by that act are ſubject to for exporting of wool, &c. Ditto, Sect. 21.

The commiſſioners for executing the office of lord high admiral of *Great-Britain* ſhall appoint three ſhips of the ſixth rate, and eight or more armed ſloops, conſtantly to cruize on the coaſt of *Great-Britain* and *Ireland*, with orders for ſeizing all veſſels in which any worſted, bay, or woollen yarn, or any drapery ſtuffs, or woollen manufactures, made up or mixed with wool or wool-flocks, ſhall be exported or laden from *Ireland* into foreign parts, &c. 5 *Geo.* II. C. 21. S. 1.

All wool, and woollen or bay yarn, woolfels, ſhortlings, mortlings, wool-flocks, worſted, yarn, cloth, ſerge, bays, kerſies, ſays, frizes, druggets, cloth ſerges, ſhalloons, ſtuffs, and other draperies and woollen manufactures, or mixed with wool, or wool-flocks, which ſhall be exported from *Ireland* after the firſt of *May*, 1740, into the ports of this kingdom hereafter mentioned, ſhall be ſhipped off, and entered at the ports of *Dublin*, *Waterford*, *Youghall*, *Kinſale*, *Cork*, *Drogheda*, *New Roſs*, *Newry*, *Wexford*, *Wicklow*, *Sligo*, *Limerick*, *Galway*, and *Dundalk*, in the ſaid kingdom of *Ireland*, and from no other port or place; nor ſhall the ſame be imported into any parts of this kingdom, other than the ports of *Biddeford*, *Barnſtaple*, *Minehead*, *Bridgewater*, *Briſtol*, *Milford-Haven*, *Cheſter*, and *Liverpool*, in the ſame manner as if the ſaid ports of *Newry*, *Wexford*, *Wicklow*, *Sligo*, *Limerick*, *Galway*, and *Dundalk*, had been particularly named for exportation of the ſaid goods, in the act 10 and 11 *Will.* III. intitled, *an act to prevent the exportation of wool out of the kingdom of* Ireland *and* England, and for other purpoſes therein mentioned. 12 *Geo.* II. p. 438.

By this act, wool, &c. under the reſtriction of the above act, may be exported from any port of *Ireland* into any port of *England*. 26 *Geo.* II.

After the 25th of *December*, 1739, no wool, or any of the ſaid goods, ſhall be laden on board any ſhip or boat in *Ireland*, or imported from thence into this kingdom, but in ſuch veſſels or boats as ſhall be of the built of *Great-Britain* or *Ireland*, and wholly owned and manned by the ſubjects of this kingdom or *Ireland*, and duly regiſtered in the manner hereafter mentioned, under the penalty of the forfeiture of the ſaid goods, or the value thereof, and of the veſſel or boat in which the ſame ſhall be laden, together with all her ammunition and furniture.

No coffee ſhall be put on board any ſhip in any of his majeſty's plantations in *America*, until the planter or his known agent ſhall make oath, or affirmation, before two juſtices of the peace, that the ſame is of the growth of ſuch planter's plantation, which oath, &c. ſhall be produced to the collector, comptroller, and naval officer, by the perſon who ſhall enter ſuch coffee; and ſuch perſons ſhall likewiſe make oath, or affirmation, before the ſaid officers, that the coffee then to be ſhipped is the ſame that is mentioned in ſuch oath, &c. of the planter; and the collector, and comptroller, and naval officer, are required to deliver a certificate of ſuch affidavit to the commander of ſuch ſhip, on board which the ſaid coffee is to be ſhipped; and the maſter of ſuch ſhip ſhall, before clearing his ſhip, alſo make oath, that he has received ſuch coffee on board, and that he has no other coffee on board than ſuch, for which proofs ſhall be made as aforeſaid, and that he will not take any more coffee on board before his arrival in *Great-Britain*, and making a report of his lading there; for which affidavit and certificate the collector and comptroller, or naval officer, ſhall receive 5s. and all certificates of ſuch affidavit ſhall, by the commander of ſuch ſhip, be produced to the collector and comptroller of the cuſtoms, at the port where ſuch ſhip ſhall unlade, and the maſter ſhall deliver to ſuch collector and comptroller, a certificate of the collector and comptroller of the cuſtoms, and naval officer of the place, where ſuch coffee ſhall have been ſhipped, or any two of them, teſtifying the particular quantities of ſuch coffee, and of which ſuch proofs ſhall be made, ſpecifying the package,

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with the marks, numbers, and weights of each package; and the maſter ſhall likewiſe make oath, or affirm, that the coffee in the certificate was taken on board as in the certificate, and that after his departure he did not take on board any coffee, and that all the coffee on board his ſhip is mentioned in the ſaid certificate; and upon entry of ſuch coffee at the cuſtom-houſe, and paying or ſecuring the duties, a mark ſhall be ſet on every parcel; and thereupon ſuch coffee ſhall be lodged in a warehouſe, and the importer ſhall deliver to the collector the certificate of the affidavit of the growth of the coffee, together with the oath, and the oath, or a copy thereof, made by the planter; as alſo the certificate of the package, marks, and numbers of the coffee.

No commander of any ſhip ſhall take in at *America* or at ſea, or ſhall land in any of the ſaid plantations, any coffee of the growth of any foreign country, except ſuch as ſhall be exported from *Great Britain*, on pain of forfeiting ſuch coffee and 200l. and likewiſe twelve months impriſonment. 5 *Geo.* II. C. 24. S. 4.

If any perſon ſhall falſely make oath or affirmation, by this act directed, and thereof be convicted, &c. ſuch perſon ſhall forfeit 200l and be impriſoned twelve months; and if any perſon ſhall forge a certificate of the ſaid oath or affirmation, or ſhall publiſh ſuch certificate, knowing the ſame to be forged, and be convicted in any of his majeſty's courts, ſuch perſon ſhall forfeit 200l. Ditto, S. 5.

This act ſhall continue to the 25th of *March*, 1739, and to the end of the next ſeſſion of parliament. Ditto, S. 6.

Farther continued for ſeven years, and to the end of the next ſeſſion of parliament by 11 Geo. II. *Cap.* 18. *Farther continued for ſeven years, and to the end of the next ſeſſion of parliament by* 19 Geo. II. *p.* 412. *Farther continued by* 25 Geo. II. *to* 25 March, 1758; *and farther by* 32 Geo. II. *till* 24 June, 1766, *and to the end of the then next ſeſſion of parliament.*

Coffee ſhall not be imported but in packages of 112lb nett at leaſt; and to be ſtowed openly in the hold of the veſſel, on forfeiture of the goods and package; which may be ſeized by any officer of the cuſtoms or exciſe. 5 *Geo.* III. C. 43. S. 33.

Coffee of the *Britiſh* plantations in *America*, or foreign coffee, which ſhall have been warehouſed on the continent of *America*, to pay only half the old ſubſidy on importation; and to be warehouſed as directed, by 10 *Geo.* I. Cap. 10. Sect. 26. ſubject to the like duties, reſtrictions, and regulations, if taken out for home conſumption; and to the like ſecurities, &c. if for exportation, as coffee warehouſed purſuant to that ſtatute. 6 *Geo.* II. C. 52. S. 22.

Enacts that the acts 12, 15, and 25 *Car.* II. ſo far as the ſame extend to ſugar of the growth and produce of his majeſty's plantations in *America*, being one of the commodities enumerated in the ſaid acts, ſhall be ratified and confirmed in all reſpects whatſoever, except only as to ſuch ſugars, as by this act ſhall be permitted to be exported from the ſaid ſugar colonies, by ſuch perſons, in ſuch ſhips, to ſuch foreign countries, and under ſuch regulations as are herein deſcribed and appointed for that purpoſe. 12 *Geo.* II. *p.* 551, 552, 553.

After 29 *September*, 1739, any of his majeſty's ſubjects, in any veſſel built in *Great-Britain*, and navigated according to law, and belonging to any of his majeſty's ſubjects, of which the major part ſhall be reſiding in *Great-Britain*, and the reſidue reſiding either in *Great-Britain* or ſome of the ſaid ſugar colonies, and not elſewhere, that ſhall clear outwards in any port of *Great-Britain* for any of the ſaid colonies, may load in the ſaid colonies any ſugars of the growth and manufacture of the ſaid colonies, and may carry the ſame to any foreign part of *Europe*, provided a licence be firſt taken out for that purpoſe, under the hands of the commiſſioners of the cuſtoms at *London* or *Edinburgh*, ſubject to the regulations, and on the conditions hereafter mentioned, viz. that notice be firſt given to the maſter in writing, or one of the owners, of ſuch veſſel, to the collector or comptroller of the port where ſuch veſſel happens to be, of the intention of ſuch maſter or owner, that ſuch ſhip ſhall proceed to ſome of the ſaid ſugar colonies to lade ſugars to be carried to ſome other part of *Europe* than *Great-Britain*; and that ſuch maſter or owner, ſhall enter into bond, to the uſe of his majeſty, with one or more ſufficient ſecurities, in the ſum of 1000l. if the ſhip be of leſs burthen than 100 tons; and in the ſum of 2000l. if ſhe be of that, or greater burthen, with condition,

that in caſe a licence be granted to carry ſugars from the ſaid ſugar colonies to foreign parts, ſuch ſhip ſhall proceed from *Great-Britain* to the ſaid colonies, and ſhall deliver the licence to the naval officer there, in caſe he intends to make uſe of the liberty granted by ſuch licence, which he ſhall declare in writing to the naval officer before he takes any goods on board; and that in ſuch caſe no *tobacco, melaſſes, ginger, cotton wool, Indico, fuſtic*, or other dying wood, *tar, pitch, turpentine, hemp, maſts, yards, bowſprits, copper ore, beaver ſkins*, or other *furs*, of the growth and manufacture of any *Britiſh* plantation in *America*, ſhall be taken on board ſuch ſhip, unleſs for the neceſſary proviſions in her voyage; and that ſuch ſhip before ſhe proceeds to any foreign port ſhall touch at ſome port in *Great-Britain*, and that the maſter or commander ſhall deliver to the collector and comptroller of ſuch port a new manifeſt, atteſted upon oath (or if a quaker by affirmation) of the lading, mentioning the marks, numbers, package, and contents of all the goods on board; and ſhall alſo bring back the ſaid licence, with a certificate endorſed or affixed thereto, containing an account of the marks, numbers, package, contents, and ſorts of ſugars on board ſuch ſhips, in the manner hereafter directed; and that when ſuch ſhip hath diſcharged her lading (the danger of the ſeas and enemies excepted) ſhe ſhall return to *Great-Britain* within eight months after ſhe has delivered her lading in any foreign part, and before ſhe returns to any of the plantations in *America*; and that in caſe ſuch veſſel ſhould take on board any merchandizes before her return to *Great-Britain*, all ſuch merchandizes that ſhall remain on board the ſaid ſhip on her arrival in *Great-Britain* ſhall be entered and landed, in like manner as other ſhips importing goods into this kingdom are obliged to do by the laws of the cuſtoms, or otherwiſe ſuch goods ſhall be forfeited. 12 *Geo.* II. *p.* 554, 555.

Upon ſuch bond being entered into, and the other requiſites being duly complied with, a licence ſhall be granted accordingly, giving liberty, for that voyage only, to carry ſugars of the growth of the ſaid ſugar colonies to any foreign part, in the manner and according to the intention of this act; but no ſhip ſhall have licence to carry ſugars to foreign parts, unleſs it firſt appear by oath (or affirmation) of the maſter, that the property thereof is in his majeſty's ſubjects, of which the major part are reſiding in *Great-Britain* and the reſidue either in *Great-Britain* or in ſome of the ſaid ſugar colonies, and not elſewhere; ſuch oath or affirmation to be in the form hereafter mentioned, viz.

A. B. *maketh oath (or ſolemnly declares and affirms) that the (ſhip or veſſel) called the* (Name) *whereof he (this deponent or affirmant) is maſter, and hath the charge and command for this preſent voyage to* (place bound to) *being* (deſcribe the built) *(ſhip or veſſel) of the burthen of* (number) *tons, was built at* (place) *in the year* (time when) *and that the ſaid (ſhip or veſſel is wholly owned by the (perſon or perſons whoſe (names or names and uſual (place or places) of abode (is or are) undermentioned, and deſcribed by this (deponent or affirmant) that ſuch (owner or owners) (is or are) his majeſty's* Britiſh *(ſubject or ſubjects) and that no foreigner, directly or indirectly, hath any ſhare, part, or intereſt in the ſaid (ſhip or veſſel) to the beſt of this (deponent's or affirmant's) knowledge or belief; and that he, this (deponent or affirmant) and three-fourths of the mariners navigating the ſaid (ſhip or veſſel) are his majeſty's* Britiſh *ſubjects.* P. 556.

If any veſſel licenſed by virtue of this act ſhall take on board in any of the ſugar iſlands, or in her voyage from thence, any ſugars or other goods, being the property of any other perſon than ſome of his majeſty's ſubjects, and ſuch as ſhall be laden on their proper riſk and account to be carried to foreign parts, the ſame ſhall be forfeited.

Before any ſugar be put on board any veſſel at the ſaid colonies, to be carried to any foreign port in *Europe*, the maſter ſhall deliver to the collector of the port where ſuch ſhip is to take in her lading, the ſaid licence, ſigned by the commiſſioners of the cuſtoms, and a certificate of ſuch bond having been given in *Great-Britain* as aforeſaid, and ſhall declare in writing to the collector, whether he intends to load any ſugar purſuant to ſuch licence, which ſhall be done before any goods are laden on board ſuch veſſel, otherwiſe ſuch licence ſhall be of no force; but if it be declared that ſugars are intended to be laden, and carried to foreign parts, then, in order to aſcertain the quantity, &c. of the ſugars to be exported from the ſaid colonies, and to prevent the exportation

portation of any goods before enumerated, the perſon intending to export ſugars, or other goods not enumerated, in ſuch veſſel, ſhall, before the ſame are put on board, make an entry of ſuch ſugars, or other goods with the comptroller of the cuſtoms and the naval officer, expreſſing the name of the ſhip and maſter, and where ſhe lies; and alſo the keys and wharfs where they are to be laden, or firſt water-borne, in order to be laden; which ſhall be ſuch only where an officer is or ſhall be appointed to attend the ſhipping thereof, or at ſuch places as ſhall be mentioned in a warrant to be taken out from the comptroller for that purpoſe; and ſhall thereupon take out a warrant, whereon ſhall be endorſed by the exporter, the marks, numbers, contents, ſorts, or proper denomination of ſuch ſugars, and ſhall deliver the warrant ſo endorſed to the ſearcher, and ſhall lade ſuch ſugars in the preſence of ſuch officer, or at the places mentioned in the ſaid warrant, that the proper officers may attend the ſhipping thereof; and ſuch officers are impowered to examine the ſame, before they are put on board, and if, upon examining the ſaid ſugars or any goods ſhipped or brought to be ſhipped as ſuch, either before or after the ſhipping thereof, the number of caſks ſhall appear to be greater than endorſed on ſuch warrant; or if there be found any other ſugar but ſuch as ſhall be ſo endorſed, taken out, and delivered as aforeſaid, or any of the goods before enumerated, which by law are to be carried from thence only to *Great-Britain*, or ſome of his majeſty's other plantations; or if it be diſcovered that any enumerated goods, other than ſugar, have been put on board any veſſel having liberty to trade by virtue of this act, or ſhall be brought to be ſhipped on board ſuch veſſel, or ſhall be put into any boat, &c. in order to be put on board ſuch veſſel, before ſuch entry, or taking out, endorſing, and delivering of ſuch warrants, contrary to the directions of this act, all ſuch ſugar and other goods ſhall be forfeited; and the veſſel or carriage employed in ſhipping or attempting to ſhip any enumerated goods, other than ſugars, together with the veſſel on which ſuch other goods ſhall be laden, and the owner of ſuch ſugar or other goods ſhall forfeit double the value thereof. And before ſuch veſſel ſhall depart with the ſugar, the maſter ſhall receive the ſaid licence from the comptroller and naval officer, with a certificate under their ſeals of office, containing an account of the marks, &c. of each caſk of ſugar ſo ſhipped; and the other officers aforeſaid are to make two copies of ſuch licence and certificates; for all which entries, &c. or copies, no more ſhall be taken than the accuſtomed fees; and the maſter, before he receives the ſaid licence, ſhall atteſt the ſaid copies under his hand, which are to be left with the collector, and comptroller, and naval officer; and the ſaid collector and comptroller are required, as ſoon as conveniently they can, to tranſmit one of the ſaid copies to the commiſſioners of the cuſtoms in *Great-Britain*, by whom the licence was granted when the ſhip ſailed from *Great-Britain*; and the maſter ſhall proceed from the ſaid colonies directly to *Great-Britain*, without putting into any other port unleſs forced by ſtreſs of weather; proof whereof ſhall be made on oath to the ſatisfaction of the commiſſioners; and on the return of ſuch ſhip to *Great-Britain*, the maſter ſhall produce the ſaid licence to the commiſſioners, or to the collector of the port at which he ſhall arrive, with the endorſement or certificate annexed as before directed, and ſhall alſo deliver a true manifeſt, expreſſing the marks and numbers, with the tale and ſorts of caſks of all his lading, atteſted upon oath (or if a quaker, by affirmation) before the collector and comptroller of ſuch port, who are impowered to adminiſter the ſame; and ſhall alſo make an entry of the quantities and ſorts of all the ſugars laden on board the ſaid ſhip at any of the ſaid colonies, and then remaining on board and bound to foreign parts; (which entry the ſaid collector and comptroller are to paſs, without demanding any duties for ſuch ſugar; mentioning in their account, that ſuch entries were paſſed by virtue of this act) and ſhall alſo declare upon oath or affirmation to what foreign ports he is bound with ſuch lading; then ſuch maſter ſhall be at liberty to proceed with all the goods on board mentioned in the ſaid manifeſt, being none of the goods before enumerated, to any foreign port, without being obliged to land, or pay duty for the ſame, as aforeſaid, taking with him the ſaid licence, and a certificate under the ſeals of office from the ſaid collector and comptroller, teſtifying that the ſaid ſhip had touched at ſuch port, and had in all reſpects complied with the directions of this act; but if any ſuch veſſel ſhall proceed to any foreign part without having firſt touched at ſome port in *Great-Britain*, and having complied with the directions of this act,

and

and having the ſame certified as aforeſaid; or if any of the goods before enumerated, beſides ſugars, ſhall be found on board, or carried by any ſuch veſſel to any foreign parts, then the liberty granted by ſuch licence ſhall become void, and ſuch veſſel, and alſo the maſter, and all others concerned, ſhall be liable to the ſame penalties as they would have been liable to if this act had not been made. 12 *Geo.* II. 557, 558, 559, 560.

If the commiſſioners of the cuſtoms in *Great-Britain*, or the collector and comptroller of the port where the veſſel ſhall touch, ſhall, upon information on oath, have cauſe to ſuſpect that ſome enumerated goods, other than ſugars, are on board ſuch veſſel, and ſhall thereupon judge it neceſſary to unlade the goods from ſuch ſhip, or any part thereof; in ſuch caſe, the officers of the cuſtoms, or any perſons employed by them, may enter and remain on board ſuch ſhip, and unlade the ſame or any part thereof, as they ſhall judge neceſſary, to enable them to examine any part of ſuch ſhip and all the goods on board, and detain her ſo long as ſhall be neceſſary for the purpoſe, and alſo may open and examine any cabins, &c. or any concealments, or other places in the ſides of ſuch ſhip, or any part thereof, or any trunk, caſk, &c. to diſcover whether any more, or other goods are on board, than ſuch as are mentioned in the manifeſt delivered by the maſter, and may ſeize all goods not mentioned therein, which ſhall be forfeited; but in caſe no goods be found on board but what are mentioned in the ſaid manifeſt, then the officers who ſhall unload or unpack any goods ſhall re-load and re-pack the ſame, and repair ſuch damage as ſhall be done by unloading or unpacking thereof, without being liable to any other coſts for demurrage, or on any other account whatſoever; but if any other goods are found on board beſides ſuch as are mentioned in the maſter's manifeſt (except the neceſſary proviſions of the ſhip) then the maſter ſhall be at the charge of re-loading and re-packing all the goods unladen or opened, and of repairing all other damages occaſioned thereby; and the officers concerned ſhall not be at any expence, or be liable to any coſts whatſoever. P. 561.

If any ſhip ſhall have on board any ſugar, for which licence ſhall have been granted as aforeſaid, or any other goods not enumerated in the act before-mentioned, and the owners, or their agent, on the arrival of ſuch ſhip in *Great-Britain*, ſhall be deſirous to enter and pay the duty, and land the goods, or any part thereof, they ſhall have liberty ſo to do, the maſter firſt making a report of his whole lading with the proper officers of the cuſtoms, in like manner as he was required to do before the making of this act.

If the maſter, or perſon taking charge of any veſſel, for which a licence has been granted, ſhall, on his arrival in any of the ſaid ſugar colonies, have delivered to the collector, comptroller, or naval officer, the ſaid licence, with a certificate of bond being given in *Great-Britain*, as aforeſaid; and before he lades any goods ſhall declare in writing, upon oath, or affirmation, before any two of them, that the ſugars he intends to lade are to be carried to ſome place to the ſouthward of *Cape Finiſterre*; then the ſaid maſter may, in caſe he has in all reſpects complied with the directions of this act, proceed thither directly with ſuch veſſel, taking with him ſuch licence and oath, or affirmation, endorſed thereon by the collector, &c. together with an account of the marks, &c. of ſugars laden by virtue of ſuch licence, likewiſe endorſed thereon, or contained in a certificate annexed, in the manner before directed, and may there land the ſame, without firſt touching at any port in *Great-Britain*; but in ſuch caſe the maſter ſhall within eight months after landing the ſaid ſugars, and before ſuch veſſel ſhall go again to any of the plantations in *America*; return to ſome port of *Great-Britain*, and there deliver his ſaid licence to the commiſſioners of the cuſtoms, or the collector and comptroller of ſuch port, with ſuch oath or affirmation endorſed thereon, and certificate annexed thereto as aforeſaid, together with a certificate from the conſul or two known *Britiſh* merchants of good credit, reſiding at the places where ſuch ſugars were landed, teſtifying the landing thereof as aforeſaid, and the maſter ſhall likewiſe make oath or affirmation before the collector to the truth of ſuch certificate, and that none of the goods before enumerated, except ſugar, were taken on board at any of the ſaid colonies, or landed at the place mentioned in the certificate; and ſhall likewiſe make an entry with ſuch collector, of the quantity and ſorts of all the ſugars laden on board the ſaid ſhip at any of the ſaid colonies, and landed at any port to the ſouthward of *Cape Finiſterre*, which entry the collector or comptroller are to paſs, without demanding any duties

duties for the ſame, mentioning in their accounts, that ſuch entries were paſſed, by virtue of this act; and in caſe the ſaid maſter ſhall neglect or refuſe to make ſuch entry, on his return to *Great-Britain*, he ſhall forfeit 100l. 12 *Geo.* II. p. 562, 563.

Upon the return to *Great-Britain* of any ſhip or veſſel which ſhall carry ſugars from the ſugar colonies to any foreign parts, the maſter ſhall, in either caſe before-mentioned, bring back, and deliver to the commiſſioners of the cuſtoms, or to the collector of the port where ſuch veſſel ſhall arrive, the ſaid licence, together with a certificate, ſigned and ſealed by the conſul, or to known *Britiſh* merchants of good credit, at the port where ſuch ſugar was landed, certifying the landing thereof, with the number of caſks landed, and the mark, number, and contents of each caſk, with the name of the ſhip and maſter, and that they verily believe that no tobacco, or other goods before enumerated, except ſugar, have been there landed out of ſuch veſſel; and upon ſuch licence being returned, with the oath or affirmation of the maſter, and an account of the lading endorſed thereon, or annexed thereto as aforeſaid; and the ſeveral other things required by this act being duly complied with, the bond given before granting ſuch licence ſhall be diſcharged and delivered up; otherwiſe ſuch bond ſhall be forfeited, and may be proſecuted in the manner directed by this act. P. 564

In caſe any ſhip or veſſel ſhall, after unloading ſuch ſugars, or any part thereof, take on board any goods before her return to *Great-Britain*, all ſuch of the ſaid goods as remain on board at her arrival in *Great-Britain*, ſhall be entered and landed on the return of ſuch veſſel to *Great-Britain*, and before her departure from thence, and ſhall be ſubject to ſuch regulations, as the like goods imported in any other ſhip are ſubject to by the laws of the cuſtoms.

This act not to excuſe any veſſel trading to or from the ſaid ſugar colonies being regiſtered purſuant to the act 7 and 8 *Will.* III. on proof of the property made by one or more of the owners in the manner, and under the penalties inflicted by the ſaid act.

No maſter or owner of any veſſel, carrying ſugars, as aforeſaid, ſhall advance to any mariner during the time he ſhall be in parts beyond the ſeas any money or effects, upon account of wages, exceeding one moiety of the whole wages due from the time of his departure from *Great-Britain*, till ſuch veſſel ſhall return to *Great-Britain*, and if any maſter or owner ſhall advance any wages to any ſeamen above the ſaid moiety, ſuch maſter or owner ſhall forfeit double the money he ſhall ſo advance. P. 565.

If any perſon ſhall grant any falſe certificate, or counterfeit, eraſe, or alter any licence, oath, or certificate, made purſuant to this act, or ſhall knowingly publiſh or make uſe thereof, ſuch perſon ſhall forfeit 500l. to be recovered, and be diſpoſed of in the manner directed by this act, and ſuch licence, &c*e* ſhall be void.

Nothing in this act ſhall be conſtrued to give liberty to carry ſugars from any of the ſaid ſugar colonies to *Ireland*. (This clauſe is repealed by 20 *Geo.* III.) P. 566.

This act ſhall continue in force five years, from the 29th of *September*, 1792, and from thence to the end of the next ſeſſion of parliament. 26 *Geo.* III. C. 53.

By an act paſſed 7 *and* 8 Will. III. *for preventing frauds and regulating abuſes in the plantation trade*; and by another act of 5 *Anne*, *for an union of the two kingdoms of* England *and* Scotland, no ſhip or veſſel ſhall paſs as a ſhip of the built and property of *Great-Britain*, *Ireland*, *Guernſey*, *Jerſey*, or any of his majeſty's plantations in *America*, or a *prize ſhip* made free, ſo as to be qualified to trade to, or from, or in any of the ſaid plantations, till the perſons claiming property therein ſhall make oath, and regiſter the ſame in manner therein directed; and if any ſhip's name ſo regiſtered ſhall be altered, or any tranſfer of property to another port, ſuch ſhip is thereby directed to be regiſtered *de novo*, on delivering up the former certificate to be cancelled; and if the property be altered in the ſame port by the ſale of ſhares in any ſhip, after regiſtering, ſuch ſale is to be acknowledged, by indorſing on the regiſter before two witneſſes; notwithſtanding which the certificates of the regiſter of ſeveral ſhips have been frequently ſold to foreigners and delivered to the purchaſers; and the ſhips of foreigners under colour thereof have been admitted to trade to and from the plantations, though of foreign extraction, contrary to law, to the prejudice of the navigation of *Great-Britain* and the plantations; for preventing which it is enacted, that after the 25th of *December*, 1742, no ſhip or veſſel, required by the ſaid acts to be regiſtered, and carrying

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merchandizes to and from any of his majeſty's plantations in *America*, or to and from one plantation to another, ſhall be deemed qualified to trade within the intent of the ſaid acts, till the maſter, or perſon having charge of the ſhip, ſhall upon oath or affirmation before the governor or collector of the cuſtoms, of every the ſaid plantations, where they ſhall arrive, give a juſt and true account of the name and burthen thereof, and of the place from whence ſhe came, and of all particulars in the following form, *viz.*

A. B. *maketh oath (or if a quaker, ſolemnly affirms) that the ſhip or veſſel, called the whereof he, this deponent or affirmant, is maſter, or hath the charge and command, during this preſent voyage, being of the burthen of tons, came laſt from and that ſhe is as he verily believes, the ſame ſhip or veſſel deſcribed, meant, and intended in, and by, the certificate now produced by him; and that the ſame does now, as he believes, belong wholly to his majeſty's* Britiſh *ſubjects, and that no foreigner has, directly or indirectly, any ſhare, property or intereſt therein, to his knowledge or belief.* 15 and 16 *Geo.* II. P. 711. P. 712.

If any ſhip or veſſel ſhall load or unload any goods, &c. in any of the plantations in *America* before ſuch proof be made, the ſame ſhall be forfeited, and may be proſecuted, recovered, and divided, in like manner as if ſhe had not been regiſtered, as directed in the act 7 and 8 *Will.* III. P. 713.

After the 25th of *December*, 1742, if any ſhip or veſſel duly qualified to trade to, and from, and in his majeſty's plantations, ſhall happen to be in any of the ſaid plantations, and the certificate of the regiſter ſhall be loſt or miſlaid, the maſter or other perſon, having the charge of the ſaid ſhip or veſſel, may make oath, or affirmation, before the governor or collector of the cuſtoms, in the port where the ſhip or veſſel ſhall happen to be, in the following form:

A. B. *being maſter, or having the charge of the ſhip or veſſel called the does ſwear (or ſolemnly affirm) that the ſaid ſhip or veſſel has been, as he verily believes, regiſtered according to law, to qualify her to trade to, from, and in his majeſty's plantations in* America, *and that he had a certificate thereof, granted at the port of but that the ſame is loſt or miſlaid, and that he cannot find the ſame, and does not know where the ſame is, or what is become thereof, and that the ſame hath not been, nor ſhall be, with his privity or knowledge ſold or diſpoſed of to any perſon or perſons whatſoever; and that he, this deponent or affirmant, and three-fourths of the mariners navigating the ſaid ſhip or veſſel are his majeſty's* Britiſh *ſubjects, and the ſaid ſhip or veſſel does now, as he believes, belong wholly to his majeſty's* Britiſh *ſubjects, and that no foreigner has, to his knowledge or belief, any ſhare, property, or intereſt therein.*

The ſaid maſter, or other perſon navigating the ſaid ſhip or veſſel, ſhall give 500l. ſecurity, if the ſhip be of one hundred tons burthen or under, and ſo in proportion for any greater burthen, to the collector of the port where the ſhip ſhall be, in his majeſty's name, and to his uſe, with condition that the ſhip was duly regiſtered according to law, for qualifying the ſame to trade to, from, or in his majeſty's plantations in *America*; and that the certificate of the ſaid regiſter, if found, ſhall be delivered up to the commiſſioners of the cuſtoms, to be cancelled, and that no illegal uſe has been, or ſhall be made thereof; that the ſame has not been, or ſhall be fraudulently diſpoſed of; that the ſaid ſhip or veſſel wholly belongs to *Britiſh* ſubjects; and that no foreigner has any ſhare, property, or intereſt therein; and on making ſuch oath, or affirma ion, and giving ſuch bond, the governor and collector of the cuſtoms ſhall freely give the maſter, &c. of ſuch ſhip or veſſel a freſh certificate, which ſhall enable him to trade for that voyage only; and the officers taking the ſaid oath and bond ſhall tranſmit an account thereof to the commiſſioners of the cuſtoms. P. 714.

If the certificate of the regiſter of any ſhip be loſt, and the maſter, or perſon having the charge of the ſhip, and one or more of the owners, ſhall make proof to the ſatisfaction of the commiſſioners of the cuſtoms in caſe the owners or any of them, ſhall reſide in *Great-Britain*, or *Ireland*, *Guernſey*, or *Jerſey*; or of the governor, or collector

of

of the cuſtoms, reſiding in any of his majeſty's plantations in *America*, if ſhe was regiſtered in ſuch plantation; and none of the owners ſhall reſide in *Great-Britain*, or *Ireland*, *Guernſey* or *Jerſey*, upon oath, or affirmation, of the loſs of ſuch certificate, alſo of the name, burthen, built, property, and other particulars, required by the act 7 and 8 *Will.* III. in the ſame manner, and before the ſame perſons as are required on original regiſters, and ſhall give 500l. ſecurity, if the ſhip be of one hundred tons, and ſo in proportion for any greater burthen, to the collector of the port where the ſhip ſhall belong, and that the original certificate hath not been, nor ſhall be fraudulently diſpoſed of, or uſed contrary to law; and that if the ſame be found, it ſhall be delivered up to the commiſſioners to be cancelled; in ſuch caſe the ſaid commiſſioners, and the governor, and collector of the cuſtoms, reſiding at the plantations reſpectively, are required to permit ſuch ſhip or veſſel to be regiſtered *de novo*, and the proper officers ſhall deliver a certificate thereof to the owners as directed by the act 7 and 8 *Will.* III. and therein mention the name by which the ſhip was formerly regiſtered, and that ſuch a certificate of a new regiſter is granted in purſuance of this act inſtead of a former certificate, which appears by ſuch proof, as this act requires, to be loſt; and that ſuch new regiſter and certificate ſhall have the ſame effect with the original, and a duplicate ſhall be tranſmitted to the commiſſioners.

After the 29th *September*, 1742, all plantation bonds taken in *Great-Britain*, purſuant to any former act of parliament, whereby the goods therein enumerated are to be brought to *Great-Britain*, ſhall be with condition, that within eighteen months from the date thereof (the danger of the ſeas excepted) a certificate ſhall be produced from the collector and comptroller of the port where ſuch goods ſhall be delivered, that they have been there landed and diſcharged; otherwiſe ſuch bonds ſhall be forfeited, and the penalty ſued for in the court of *Exchequer* in *England*, *Scotland*, or *Ireland*, reſpectively. 15 and 16 *Geo.* II. p. 716.

This act ſhall not extend to bonds given for ſhips lading ſugars, in any of his majeſty's ſugar colonies in *America*, by licence from the commiſſioners, to be carried directly to any foreign part of *Europe* purſuant to an act paſſed 12 *Geo.* II. P. 717.

By two clauſes in the act 12 *Car.* II. it is enacted, that no goods or commodities whatſoever, of the growth, production, or manufacture of *Africa*, *Aſia*, or *America*, ſhall be imported into *England*, *Ireland*, or *Wales*, iſlands of *Guernſey* or *Jerſey*, or town of *Berwick upon Tweed*, from any other places or countries, but only from thoſe of the ſaid growth, production, or manufacture, or from thoſe ports where the ſaid goods and commodities can only be, or uſually have been, firſt ſhipped for tranſportation, under the penalty of the forfeiture of all ſuch goods as ſhall be imported from any other place or country, contrary to the true intent and meaning thereof; as alſo of the ſhip in which they were imported, with all her guns, furniture, ammunition, tackle and apparel; and there is a proviſo in the ſaid act, that it ſhall be lawful for any of the people of *England*, *Ireland*, *Wales*, iſlands of *Guernſey*, or *Jerſey*, or town of *Berwick upon Tweed*, in veſſels, or ſhips to them belonging, and whereof the maſter and three-fourths of the mariners, at leaſt, are *Engliſh*, to load, and bring in from any of the ports of *Spain* or *Portugal*, or *Weſtern Iſlands* commonly called *Azores*, or *Madeira* or *Canary Iſlands*, all ſorts of commodities of the growth, production, or manufacture of the plantations or dominions of either of them reſpectively; and diſputes have aroſe on the conſtruction of the ſaid proviſo, whether the goods of the growth, production, or manufacture of the plantations of *Spain* or *Portugal*, may be imported for account of aliens, from the places, and in the manner expreſſed in the ſaid proviſo, and whether ſuch goods belonging to aliens, ſo imported are not liable to be forfeited, together with the ſhip, which tends to the prejudice of the *Britiſh* navigation, as likewiſe detrimental to the publick revenue; it is therefore enacted, that it ſhall be lawful for any perſons to import the goods mentioned in the ſaid proviſo, and in ſuch ſhip ſo navigated, as is therein expreſſed, although ſuch goods are the property of aliens. 17 *Geo.* II. p. 720.

It ſhall be lawful to import, in any ſhip belonging to *Great-Britain*, or any ſtate in amity, from any place, *Indigo* of all ſorts. 7 *Geo.* II. C. 18. S. 2.

The ſaid act 13 *Geo.* I. Cap. 25. and this act ſhall continue ſeven years from the 24th of *June* 1734, &c. Ditto, Sect. 3.

Continued

Continued till June 1, 1747, *and from thence to the end of the next ſeſſion of parliament, by* 14 Geo. II. *p.* 660; *and further continued till the 1ſt of* June, 1754, *and to the end of the then next ſeſſion of parliament by* 20 Geo. II. *p.* 972.

And as ſeveral acts have been made to encourage the growth of this, and ſeveral other commodities in his majeſty's *American* colonies, I think they may properly be introduced in this place, as affairs in which navigation has a conſiderable concern; therefore, before I conclude the ſubject of ſhipping, I ſhall let my readers ſee what premiums have been given by parliament, on the importation of them here.

It is hereby enacted, that from and after the 25th of *March*, 1749, all perſons who ſhall import into this kingdom, directly from any of the *Britiſh* colonies in *America*, in veſſels that may legally trade there, and manned as by law is required, any good and merchantable indigo, free from any falſe mixture, and fit for dyers uſe, being the product of the colony from whence the ſame is imported, ſhall be intitled to 6d. for every pound thereof, to be paid out of the cuſtoms upon demand, by the collector of the port where the ſame ſhall be imported, and for want of ſufficient money in his hands, he ſhall certify the ſame to the commiſſioners of the cuſtoms, who ſhall cauſe the bounty of the indigo, imported into *England*, to be paid by the receiver-general of the cuſtoms in *England*, and of that imported into *Scotland*, by the Receiver-general there. 21 *Geo.* II. p. 887, 888.

Every perſon loading indigo, on board any veſſel in any of the *Britiſh* colonies in *America*, ſhall, before the clearing out of ſuch ſhip for any port of *Great-Britain*, produce to the governor, lieutenant-governor, collector and comptroller of the cuſtoms, and naval officer, or any two of them, a certificate, ſigned and ſworn to before ſome juſtice there, by the planter, his known agent or factor, that a quantity of indigo (expreſſing the weight) had been ſent from his indigo work, or plantation, where the ſame was made, in order to be ſhipped off or ſold by him to the perſon therein named, and was of the growth and produce of the ſaid plantation, ſituate in the diſtrict or pariſh of within the iſland or colony of which certificate ſhall be atteſted by the ſaid juſtice, to have been ſigned and ſworn to in his preſence, and he is required to do the ſame *gratis*.

The merchant, at the time of producing ſuch certificate, ſhall alſo ſign a certificate before the governor, lieutenant-governor, collector, &c. or any two of them, that the indigo ſhipped by him is the ſame mentioned in the certificate; and they ſhall thereupon deliver to him a certificate, under their hands and ſeal of office, of his having received ſuch certificate; and that at the ſame time a certificate from the planter or agent, &c. had been produced and left with them, purſuant to the directions of this act; and no perſon importing indigo ſhall be intitled to the *premium*, unleſs he ſhall produce ſuch certificate to the chief officer of the cuſtoms at the port in *Great-Britain*, where the ſame ſhall be imported. P. 889.

On the importation of any indigo into *Great-Britain*, a certificate ſhall be given, by the maſter or commanding officer, that the ſame was ſhipped on board the ſaid ſhip, within ſuch *Britiſh* colony in *America*, as is mentioned in the certificate; and alſo a certificate, ſigned by two officers of the cuſtoms of the port where the ſame is entered and landed, ſpecifying the weight, and that the ſaid indigo is good and merchantable, free from falſe mixtures, and of ſuch quality as to be intitled to the ſaid *premiums*; which certificate the ſaid officers are to grant, within ten days after the landing thereof, unleſs they can aſſign ſufficient cauſe for their refuſal; upon producing which ſeveral certificates to the proper officer, as aforeſaid, he ſhall pay the *premium* to the importer.

If any perſon ſhall make entry of foreign-made indigo, under the name of *Britiſh* plantation-made, or ſhall mix any foreign indigo, or other falſe mixture with that made in the *Britiſh* plantations, in order to claim the *premium*, he ſhall forfeit all ſuch indigo; and in caſe of ſuch mixture the quantity ſo mixed, both foreign and *Britiſh* plantation-made, and double the value thereof, ſhall be forfeited by the perſon making ſuch mixture.

No certificate ſhall be granted for the ſaid *premium* on indigo that is not good and merchantable, and free from any falſe mixture.

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The officers of the cuſtoms, before their making out any ſuch certificate, ſhall examine the indigo by opening each package, and ſeeing the whole contents, to diſcover whether the indigo is good and merchantable, and free from any falſe mixtures 21 *Geo.* II. p. 890.

No certificate ſhall be granted by the officers of the cuſtoms for any indigo which is not worth 3s. when the *French*, or other indigo of equal goodneſs with the beſt *French*, is worth 4s. *per* pound; and ſo in proportion, if the beſt *French* or other indigo of equal goodneſs ſhall be at the higher or lower price.

If any diſpute ſhall ariſe concerning the quality of ſuch indigo as is imported into the port of *London*, the commiſſioners of the cuſtoms may call two or more dyers, dry-ſalters, brokers, or others well ſkilled in that commodity, who ſhall declare their opinion upon oath, as to the quality thereof, if required, and determine whether the ſaid indigo is intitled to the *premium* or not; and in caſe of any diſpute in any of the out-ports in *England*, ſamples of the indigo ſhall be ſent up to the commiſſioner of the cuſtoms at *London*; and in the out ports in *Scotland*, to the commiſſioners of the cuſtoms at *Edinburgh*, in ſuch manner as the reſpective commiſſioners ſhall direct, in order to be inſpected and adjudged there.

No fee ſhall be demanded or taken by any officer of the cuſtoms, for the examining or delivering ſuch indigo, or for ſigning certificates for the *premium*; under penalty of forfeiting his office and 100l. &c.

No certificates or debentures, made in purſuance of this act, ſhall be chargeable with any ſtamp duties.

If any *Britiſh* plantation-made indigo from *America*, ſhall, after the 25th of *March*, 1749, be exported from *Great-Britain*, the exporter, before the entry thereof, ſhall pay to the collector or chief officer of the cuſtoms of the port, the whole of the *premium*, over and above any duty ſuch indigo is ſubject to at exportation by any former act. P. 891.

If any perſon ſhall be found fraudulently to export ſuch indigo, without paying the *premium* as aforeſaid, he ſhall forfeit the indigo, and double the value thereof.

If any diſpute ſhall ariſe, whether the ſaid indigo, or any part thereof, ſo to be exported, is of the growth and manufacture of the *Britiſh* plantations in *America*, or of foreign product, the *onus probandi* ſhall lie on the claimer and not on the proſecutor.

If any governor, collector, or any other perſon, ſhall, during the continuance of this act, falſely make a certificate of the produce and manufacture of any indigo, not being of the *Britiſh* plantations in *America*, or ſhall counterfeit any ſuch certificate, in order to obtain the *premium* aforeſaid, he ſhall forfeit 200l. and if the offender be a collector, or any other officer of the cuſtoms, he ſhall alſo loſe his office, and be incapable of ſerving his majeſty, &c. P. 892.

This act ſhall be in force for ſeven years, to commence from the 25th of *March*, 1749, and from thence to the end of the then next ſeſſion of parliament.

Further continued by 28 Geo. II. *till* 25 March, 1763, *and to the end of the ſeſſion.*

As it will greatly tend to the increaſe and improvement of the ſilk manufactures of this kingdom, to encourage the growth and culture of ſilk in his majeſty's dominions in *America*; it is enacted that from and after the 24th of *June* 1750, raw ſilks of the growth and culture of any of his majeſty's colonies or plantations in *America* may be directly imported from thence into the port of *London* duty-free, due entry thereof being firſt made at the cuſtom-houſe at the time of importation, in the ſame manner and form (expreſſing the package, marks, and numbers, together with the qualities of the reſpective goods) as was uſed before the making of this act, and ſo as the ſame be landed in the preſence of, and examined by, the proper officer of the cuſtoms, and be imported in veſſels that may lawfully trade to his majeſty's plantations, manned as the law requires; and, on failure of the conditions herein laſt mentioned, the ſaid ſilks are to be liable to payment of the reſpective duties, as if this act had not been made. 23 *Geo.* II. p. 395, 396.

The merchant or other perſon, who ſhall, after the 24th of *June*, 1750, lade any raw ſilk on board any veſſel in any of the *Britiſh* colonies in *America*, is before the clearing out of ſuch veſſel from thence, to make oath before the collector or comptroller

troller of the cuſtoms, and naval officer of the port, or any two of them, that the ſaid ſilk (expreſſing the quantity thereof) is *bonâ fide* of the growth and culture of the *Britiſh* plantations in *America*; expreſſing the pariſh or place where the ſame was cultivated, and by whom, producing ſuch perſon's oath thereto, made before the governor of the place, or the next juſtice of the peace (which ſeveral oaths are to be adminiſtered *gratis*) and the maſter or perſon taking charge of ſuch veſſel is to bring with him a certificate, ſigned and ſealed by the collector and comptroller of the cuſtoms, and naval officer, or any two of them (which they are to give *gratis*) expreſſing the marks, numbers, tale, and weight of the raw ſilk in each bale or package, with the names and place of abode of the exporters thereof, and of the perſon who ſhall have ſworn the ſame to be of the growth and culture of the ſaid *Britiſh* colonies, and of the perſon to whom the ſame ſhall be conſigned in the port of *London*; which certificate the maſter, on his arrival at the port of *London*, is to deliver to the collector or comptroller, or other chief officers of the cuſtoms, at or before the entry of the ſaid ſilk, and to make oath before one of the ſaid officers (which oath is to be adminiſtered *gratis*) that the ſaid bales and parcels, and goods contained in ſuch certificate, are the ſame which were taken on board in the ſaid *Britiſh* plantations in *America*; and on default made in any of the premiſes, the ſaid ſilks are liable to the payment of the reſpective duties, as if this act had not been made. 23 *Geo* II. p. 397.

If any perſon ſhall, after the 24th of *June*, 1750, enter any foreign raw ſilk under the name or deſcription of raw ſilk of the growth or culture of any of the *Britiſh* colonies of *America*, or ſhall mix any foreign raw ſilk with raw ſilk of the growth of the ſaid *Britiſh* colonies, in order to avoid payment of the duties for the ſame, he is to forfeit 50l. for every ſuch offence, and all ſuch foreign raw ſilk; and, in caſe of any mixture, the quantity mixed, both of foreign and *Britiſh* plantation growth, or the value thereof, together with the packages containing the ſame, are to be forfeited, &c. P. 398.

If any doubt or diſpute ſhall ariſe, whether the ſaid raw ſilk is foreign, or of the growth or culture of the *Britiſh American* plantations, the *onus probandi* lies on the claimer.

As the importation of bar-iron from his majeſty's colonies in *America*, into the port of *London*, and the importation of pig-iron from the ſaid colonies into any port of *Great-Britain*, &c. will be a great advantage, not only to the ſaid colonies, but alſo to this kingdom, &c. It is enacted, that from and after the 24th of *June*, 1750, the duties, now payable on pig-iron, made in, and imported from his majeſty's colonies in *America*, into any port of *Great-Britain*, ſhall ceaſe; and that no duty ſhall be payable upon bar-iron made in, and imported from the ſaid colonies, into the port of *London*. 23 *Geo*. p. 519, 520.

No ſuch bar-iron ſo imported into the port of *London* ſhall afterwards be exported or be carried coaſtwiſe to be landed at any other place in *Great-Britain*, except for the uſe of his majeſty's dock-yards, upon pain that the ſame, and the veſſel, be liable to ſuch forfeiture and ſeizure, as prohibited or uncuſtomed goods clandeſtinely exported or imported, or the veſſel on board of which the ſame ſhall be exported or imported, are now liable to by law; and alſo upon pain that the exporter, and maſter, and mariners of the veſſel, ſhall be ſubject to the like penalties and puniſhments as the maſter or mariners of veſſels laden with prohibited or uncuſtomed goods, or goods clandeſtinely exported or imported are now liable by law; and no officer of the cuſtoms ſhall grant any cocket, &c. for exporting or carrying coaſtwiſe any ſuch bar-iron ſo exported, except for the uſe of his majeſty's dock-yards, upon pain of forfeiting 200l. &c. and if any ſuch cocket, &c. ſhall be granted, the ſame ſhall be void.

No bar-iron whatſoever ſhall be permitted to be carried coaſtwiſe, unleſs mention be made in the certificate of the day on which the duties payable on the importation thereof, were paid, and of the names of the perſons by whom paid.

No bar-iron imported into the ports of *London*, by virtue of this act ſhall be carried or conveyed by land-carriage to any place beyond ten miles from any part of the port of *London*, except to his majeſty's dock-yards for the uſe of the ſame, upon pain of the offender paying 20s. for every hundred-weight thereof.

Every

Every perſon loading pig, or bar-iron on board any veſſel in any of his majeſty's colonies in *America*, ſhall, before clearing out for any port of *Great-Britain*, make oath before the governor or lieutenant-governor, collector and comptroller of the cuſtoms, and naval officer, or any two of them (which oath they are to adminiſter without fee) that the pig or bar-iron ſo ſhipped (the true weight whereof ſhall be expreſſed in the oath) was made at within the colony of ; in which oath alſo the name of the perſon to whom the iron ſhall be ſold or conſigned ſhall be expreſſed; and thereupon the ſaid governor, lieutenant-governor, collector and comptroller of the cuſtoms, and naval officer, or any two of them, ſhall give to the perſon making ſuch oath, a certificate under their hands and ſeal of office, of the ſame having been made before them.

No ſuch pig or bar-iron ſhall be imported duty-free, as aforeſaid, unleſs the ſame ſhall be ſtamped with ſome marks denoting the colony or place where the ſame was made, and unleſs the importer ſhall produce ſuch certificate to the chief officer of the cuſtoms at the port where the ſame ſhall be imported, and unleſs oath be made by the maſter of the veſſel, before ſuch officer (which he is to adminiſter without fee) that the ſaid iron is the ſame mentioned in the certificate.

All pig or bar-iron, which ſhall not be ſtamped and certified as aforeſaid, ſhall be ſubject to the payment of the ſame duties to which it was liable before the making of this act.

If any governor, lieutenant-governor, collector, or comptroller of the cuſtoms, naval officer, or chief officer of the cuſtoms as aforeſaid, ſhall falſely make any ſuch certificate, he ſhall forfeit 200l. for every ſuch offence, and his office, &c. and if any merchant, &c. ſhall falſely make any oath required by this act, he ſhall incur the penalties of wilful and corrupt perjury; and if any perſon ſhall knowingly counterfeit any ſuch ſtamp or certificate, or publiſh the ſame knowing it to be counterfeited, he ſhall incur the penalties of forgery. 23 *Geo.* II. p. 523.

After the 24th of *June*, 1750, no mill, or other engine for ſlitting or rolling of iron, or any plating-forge to work with a tilt hammer, or any furnace for making ſteel, ſhall be erected or continued in any of his majeſty's colonies in *America*, upon pain that every perſon offending herein ſhall, for every ſuch mill, engine, forge, or furnace, forfeit 200l.

Every ſuch mill, engine, forge, or furnace, erected or continued contrary to the directions of this act, ſhall be deemed a common nuiſance; and every governor, &c. of any of his majeſty's colonies in *America*, where any ſuch mill, &c. ſhall be erected or continued, ſhall, upon information thereof made to him by two witneſſes upon oath (which oath he is to adminiſter) cauſe ſuch mill, &c. to be abated, within thirty days after ſuch information, upon pain of forfeiting 500l. for every ſuch offence, &c.

All bar-iron, which ſhall be imported from any of the *Britiſh* colonies in *America* into the port of *London*, ſhall be entered at the cuſtom-houſe at *London*; and every bar ſhall be marked or ſtamped in three different parts, with ſuch mark as the commiſſioners of the cuſtoms ſhall direct, two of the ſaid marks at the diſtance of one yard from each end of the bar, and the other near the middle thereof. P. 524.

If any perſon ſhall counterfeit, deſtroy, or deface any of the ſaid ſtamps, with an intent to convey the ſame to any place ten miles from the port of *London*, contrary to this act, and be legally convicted thereof, he ſhall forfeit 100l. &c. P. 525.

Every governor, &c. of any of his majeſty's colonies in *America*, ſhall tranſmit, within ſix months after the ſaid 24th of *June*, to the commiſſioners of trade and plantations, a certificate under his hand and ſeal of office, containing a particular account of every mill or engine for ſlitting or rolling iron, and every plating-forge to work with a tilt hammer, and every furnace for making ſteel, erected in his colony, at the time of the commencement of this act; expreſſing therein alſo ſuch of them as are uſed, and the names of the proprietors, and place where erected, and number in the ſaid colony; upon pain of being ſubject to the like penalties and forfeitures, as for any other offence committed by them againſt this act, &c.

The importation of bar-iron is extended to all the ports of *Great-Britain*. P. 526.

Likewiſe

Likewiſe the clauſes relating to the carrying iron coaſtwiſe, and by land beyond ten miles from *London*, are repealed. 30 *Geo.* II.

Having now concluded that part of the article of ſhipping, which concerns exports and imports, and inſerted abſtracts from all the laws in force relative thereto, particularly ſpecifying thoſe which were paſſed in the years 1779 and 1780, in favour of the commerce of *Ireland*, removing the reſtraints to which it was before oppreſſively ſubjected; I ſhall proceed to ſome other particulars, reſpecting the obligations which the maſters of merchant-ſhips and the ſeamen are under, both by the laws of conſcience, and thoſe of their country.

A maſter of a ſhip is appointed by the owners under a ſuppoſition of his having a ſufficient capacity and integrity to diſcharge the truſt repoſed in him, by a faithful, prudent, and diſcreet management of the ſhip, and affairs committed to his care.—He hath no property, either general or ſpecial, in his being conſtituted, though the law looks upon him as an officer, who muſt render and give an account for whatſoever is put into his cuſtody and under his direction; and therefore whatever misfortunes happen, or loſſes occur, be they through negligence, wilfulneſs, or ignorance, either in himſelf or mariners, he muſt be reſponſible. *Hob.* Rep. Fol. 11. *Bridgeman's* Caſe.

A maſter of a ſhip, ſo appointed by B. owner, treats with the plaintiff to take the ſhip to freight for 80 tons, to ſail from *London* to *Falmouth*, and ſo from thence to *Barcelona*, without altering the voyage, and there to unlade, at a certain rate *per* ton: and to perform this the maſter and merchant entered into a charterparty; the former obliging the ſhip and her appurtenances (valued at 300l.) though the owners of the ſhip were no parties thereunto; the maſter deviates and commits barretry, and the merchant thereby becomes a ſufferer in the loſs of his voyage and goods, for the merchandize (being fiſh) arrived not till lent was paſſed, and then rotten. The factor, to whom the cargo went conſigned, in order to procure ſatisfaction for his employer, ſueth the maſter in the court of admiralty at *Barcelona*, and upon an appeal to a higher court in *Spain*, obtains ſentence againſt the maſter and the ſhip; which coming to the merchant's hands, the owner brings an action of trover for the ſhip; the maſter ſues in chancery to ſtop the ſuit, and another brought by the owner for freight, claiming deductions out of both, for his damages ſuſtained by the maſter's breach of articles; for if the owner gives authority to the maſter to contract, he ſhall bear the loſs; but in caſe of bottomry after the voyage begun, the maſter cannot oblige the owner beyond the value of the ſhip; but this caſe is on contract. *In Chancery.* Jure Mar. p. 230.

Lord Chancellor. The charterparty values the ſhip at a certain rate, and you ſhall not oblige the owners farther, and that only with relation to the freight, not to the value of the ſhip; the maſter is liable to the deviation and barretry, but not the owners; elſe maſters would be owners of all mens' ſhips and eſtate.

The maſter of a ſhip buying proviſions for a ſhip, and having money from the owners to pay for proviſions, nevertheleſs takes them upon credit, and fails. The owners are liable to pay the debt in proportion to their reſpective ſhares in the ſhip. *Mich.* 29. *Car.* II.

The maſter of the ſhip took beef, ſails, &c. on credit, and failed; the owners were obliged to pay, and not allowed to defend themſelves, by inſiſting that the maſter was liable only, and that they had given him money to pay the plaintiff. He is but their ſervant, and therefore for his purchaſes they are anſwerable, and continue ſo till he has paid the creditor, though they gave him money for that purpoſe. 2 Vern. 643. *In Chancery*, 1709.

As ſoon as merchandizes, or other commodities, are put aboard a ſhip, whether ſhe be riding in port, haven, or any other part of the ſeas, he that is *exercitor navis* (maſter of her) is chargeable therewith, and if the ſame be there loſt or purloined, or ſuſtain any damage, whether in the haven or port, before, or upon the ſeas, after ſhe is on her voyage, either by the mariners or by any other through their permiſſion, he that is the commander muſt anſwer the damage, for the very lading the goods aboard the ſhip ſubjects him thereto. And with this agrees the *common law*, where it was adjudged, that goods being ſent aboard a ſhip, and the maſter having ſigned his bills

of

of lading for the ſame, the goods were ſtowed; and, under pretence of being preſs-maſters, divers perſons, in the night, entered the ſhip, and robbed her of thoſe goods; the merchant brought an action at *common law* againſt the maſter; and the queſtion was, whether he ſhould anſwer the ſame; for it was alledged on his part, that there was no default or negligence in him, as he had a ſufficient guard, the goods were all locked up under hatches, and the thieves came as *preſs-maſters*, and by force robbed the ſhip; and that the ſame was *vis major**, which he could not prevent: And laſtly, that though he was maſter, or *exercitor navis*, yet he had no ſhare in the ſhip, and was but in the nature of a ſervant, acting for a ſalary. But notwithſtanding, it was adjudged to the plaintiff; for the maſter at his peril muſt ſee that all things be forthcoming which are delivered to him, let what accident ſoever happen (the act of God, or an enemy, perils and dangers of the ſeas only excepted) but for fire, thieves and the like he muſt anſwer; and is in the nature of † a common carrier; and that though he receives a ſalary, yet is a known and public officer, and one that the law looks upon to anſwer; and the plaintiff hath his election to charge either maſter or owners, or both, at his pleaſure, though he can have but one ſatisfaction. F. Naut. Caup. Stab. Leg. 1. Sect. 2, 3. 6, 7. 1 Mod. 85. *Raym.* 220. 1 *Vern.* 190. 238. 2 *Keb.* 866. 3 *Keb.* 72. 112. 132. 138.

If a maſter ſhall receive goods at the wharf, or key, or ſhall ſend his boat for the ſame, and they happen to be loſt, he ſhall likewiſe anſwer both by the *marine* and *common law*.

Mayor and Com. de London, *againſt* Hunt.

Error of judgment in *B. R.* in aſſumpſit brought by the mayor and commonalty againſt *Hunt*, where they declared of a cuſtom that they and their predeceſſors, mayors, &c. had of every maſter of a ſhip 8s. per ton, for every ton of cheeſe brought from any place in *England*, to the port of *London*, *ab oriente de London bridge* (to the eaſtward of *London bridge*) in the name of weighage; and that the defendant being maſter of a ſhip had brought to the port of *London* ſo many tons which at that rate came to ſo much, which he had not paid; upon *non aſſumpſit*, verdict and judgment for the plaintiff. Upon which *Hunt* the defendant brought a writ of error, and two errors were aſſigned: 1. That the action did not lie againſt the maſter, but that the duty was due from the merchants, owners of the goods; but the judgment was affirmed, for that the maſter is intruſted with the goods and hath a recompence from the merchants for bringing the goods, and is reſponſible for them, and therefore ſhall be charged for the duty; as it would be infinite to ſearch for the owners of the ſeveral goods which are all in the cuſtody of the maſter who brought them into port, and therefore he ſhall be charged. 3 Lev. 37.

If goods are ſhipped, and an embargo or reſtraint is afterwards iſſued by the prince or ſtate where the maſter then is, and then he breaks ground or endeavours to ſail away, and in conſequence thereof any damages enſues, he ſhall be reſponſible for the ſame; the reaſon is, becauſe although his freight is due, and muſt be paid; nay, if the very goods be ſeized as *bona contrabanda*. *Digeſt. Lib.* 9. *Tit.* 2. *Leg.* 61.

A ſhip was let out to freight to *J. S.* in *England*, at 3l. 10s. *per* ton, to go to *Bourdeaux*, then an embargo is laid; ſhe afterwards proceeds to *Bourdeaux*, and the maſter, without diſcovering his firſt contract, agrees with the correſpondents there of *J. S.* to allow him 6l. 10s. *per* ton; upon this laſt agreement he recovered at law; and equity would not relieve, becauſe the performance of the firſt agreement was hindered by the embargo. *Vern.* 242.

A maſter ought not to ſail in tempeſtuous weather, nor put forth to ſea, without having firſt conſulted with his company; nor muſt he ſtay in port or harbour without juſt cauſe, when a fair wind invites his departure. *Lex oleron.* Judg. 2

If a veſſel proves leaky or diſabled, the maſter ought not for this cauſe to put any of his merchants goods aboard any enemy's ſhip, without letters of ſafe conduct, as by ſo

* The which the civil law does ſometimes allow. † *Ray.* 105. F. N. B. 104. b. 1ſt. Inſt. 89. 4 Co. 84. 2 Mod. 876. *Hob.* 17, 18. *Poph.* 178, 179. *Cro. Jac.* 188, 189, 330, 331. *Salk.* 388. 1 *Sid.* 36.

doing

doing they may be made prize, and he be obliged to anſwer the damages conſequent to the action.

Nor ſhall he put into any creeks or other places diſallowed, except driven in by tempeſt, but into ſuch ports as are by law appointed. 15 *Hen.* VI. C. 8.

Nor ought he to ſhip any merchandizes, but only at the publick ports and keys. 1 *El.* C. 11. S. 2.

He muſt not lade any prohibited or unlawful goods, whereby the whole cargo may be in danger of confiſcation, or at leaſt ſubject to ſeizure or ſurreption. 13 and 14 *Car.* II. C. 11. S. 14.

He may not ſail without able and ſufficient mariners, both for quality and number. 1 *Jac.* C. 25. 12 *Car.* II. C. 18.

The ſhip was libelled againſt in the admiralty, for that the maſter, being taken by a *French* privateer, had ranſomed the ſhip for 300l. and had ſued for the payment of it, and was carried priſoner to *Dunkirk*, and the money was not paid, &c. and ſentence was given in the admiralty againſt the ſhip; and upon motion for a prohibition, it was denied by *Holt.* chief juſtice, then alone in court; becauſe the taking and pledge being upon the high ſea, the ſhip, by the law of the admiralty, ſhall anſwer for the redemption of the maſter by his own contract. *Ex relatione m'ri place.* Ld. *Raymond.* p. 22. *Wilſon* verſ. *Bird.*

Motion was made for a prohibition to the court of admiralty, where a ſuit was proſecuted againſt a ſhip, which the maſter had hypothecated for neceſſaries, being upon the ſea in ſtreſs of weather; and the ſuggeſtion was, that the agreement was made, and the money lent upon land, *viz.* in the port of *London*, it being a *Venetian* veſſel, which came here by way of trade, and not ſtreſs of weather; but *per Holt*, chief juſtice, the maſter of the ſhip has power to hypothecate, but he cannot ſell it; and, by pawning, the ſhip becomes liable to condemnation. This was reſolved in ſolemn debate, in the caſe of *Coſtard* v. *Lewſtie*, 2 *Will.* and *Mar.* B. R. Then there is no remedy there for the hypothecation, but by way of contract: Therefore, ſince the king's bench cannot do right to the parties, it will not hinder the admiralty from doing them right; for if the king's bench allows the hypothecation, and yet denies the remedy, it will be a manifeſt contradiction.——An action was brought upon the ſtat. 2 *Hen.* IV. Cap. 11. for ſuing in the admiralty on an hypothecation, and it was held to be out of the ſtatute, in the time of lord chief juſtice *Hale*. And as to the objection, that the contract was made upon the land, and the money paid there, it muſt of neceſſity be ſo; for if a man be in diſtreſs upon the ſea, and compelled to go into port, he muſt receive the money there, or not at all. And if his ſhip be impaired by tempeſt, ſo that he is forced to borrow money to refit, otherwiſe ſhe will be loſt and for ſecurity of this money, he pledges his ſhip, ſince the cauſe of the pledging ariſes upon the ſea, the ſuit may well be in the admiralty court: But becauſe there was a precedent, where a prohibition in ſuch caſe had been granted, the court granted the prohibition, and ordered the plaintiff to declare upon it, for the law ſeemed clear to them, as before is ſaid. Ld. *Raymond*, p. 152. *Benzon* verſ. *Jefferies*. *Coſtard* verſ. *Lewſtie*.

The defendant, as executrix to the maſter of a ſhip, libelled in the admiralty court for the wages owing to the teſtator by the owner; upon which the plaintiff to have a prohibition, ſuggeſted the ſtat. of 15 *Rich.* II. Cap. 3. that the admiralty court ſhall not have cognizance of contracts made upon the land, and ſhews this contract to have been made upon the land, &c. and this caſe was moved in ſeveral terms, but oppoſed; and the counſel for the prohibition argued, that prohibitions are grantable *de jure*, and are not diſcretionary in the court, *Raym.* 3, 4. That the caſe in *Winch. Rep.* 8. was the firſt caſe where a prohibition was denied, in caſe of a ſuit by mariners for their wages, in the admiralty court, and the denial was grounded upon compaſſionate reaſons, becauſe they were poor men, and becauſe there they might join in action, but here they muſt ſever; but the ſaid caſe is contrary to the reaſons and grounds of the law; for where the contract is made upon the land, though the ſervice was done upon the ſea, it is out of the juriſdiction of the admiralty; and ſo *vice verſâ*, if the ſervice was done upon the land, and the contract upon the ſea, 12 *Co.* 79, 80. *Staunf.* 51. *b Hob.* 212. A conſultation is always denied in caſe of a ſuit by mariners, if there is a charter-party; and the ſealing of a writing cannot make any difference in reaſon, *Raym.* 3.

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A prohibition granted where the maſter libelled alone; and *è contra*, it was ſaid for the defendant, that the caſe of mariners was now ſettled, and ought not to be ſtirred; but that the great reaſon why they are permitted to ſue there is, the ſhip is the debtor, and by the law of the admiralty they may attach her, which they cannot do by the common law; and in the admiralty court they may all join in ſuit, whereas by the common law they muſt bring ſeveral actions: That the caſe of the maſter is not different, for the ſhip is ſecurity to him, and he is but a mariner, and his wages are wages at ſea; but however, where the maſter dies in the voyage, as he did in this caſe, there can be no reaſon to exclude his executors from ſuing in the admiralty, becauſe he had no opportunity of bringing his wages to account with the owners. And in 2 *Vent.* 181. *Alliſon* v. *Marſh*, the purſer, though an officer of the ſhip, was allowed to ſue for his wages in the admiralty. And in 2 *Keb.* 779. *pl.* 6. *Rex.* v. *Pike*, a prohibition was denied where the maſter and mariners joined in a ſuit in the admiralty for their wages (but *Holt* ſaid, that a prohibition ought to have been granted *quoad* in the ſaid caſe) and he cited a caſe *Hil.* 27 and 28 *Car.* II. C. B. between *Cooker* and *Older*, where *Atkins* and *Ellis*, juſtices, were of opinion, that a prohibition ought to be granted to the ſuit in the admiralty court, by the maſter of a ſhip for his wages, though *North*, chief juſtice, and *Wyndham*, juſtice, held the contrary opinion. But *Holt*, chief juſtice, ſaid, that it is an indulgence, that the courts at *Weſtminſter* permit mariners to ſue for their wages in the admiralty court, becauſe they may all join in ſuit; and it is grounded upon the principle, *quod communis error facit jus*, but they will not extend it to the maſter of the ſhip, eſpecially if he was maſter at the beginning of the voyage here in *England*, and the contract was made with him here. Poſſibly if the maſter of a ſhip died in the voyage, and another man took upon him the charge of the ſhip upon the ſea, ſuch caſe might be different. As in the caſe of *Groſwick* v. *Louthſly*, where it was held in this court lately, that if a ſhip was hypothecated, and money borrowed upon her at *Amſterdam*, upon the voyage, he who lent the money may ſue in the admiralty for it; and this court granted a conſultation in that caſe: but in another caſe, where the money was borrowed upon the ſhip before the voyage, the king's bench granted a prohibition, and the parties acquieſced under it. There are many precedents in the court of admiralty of ſuits by the mariners for their wages, but none for the maſter of the ſhip: and the caſes differ; for the mariners contract upon the credit of the ſhip, and the maſter upon the credit of the owners of the ſhip, of whom generally he is one, &c. It was moved, that the court would compel the plaintiff to put in bail to the action to be brought for the wages at common law, or otherwiſe deny the prohibition, which it was ſaid had been done often: *Holt*, chief juſtice, confeſſed that the court had ſometimes interpoſed, and procured bail to be given, but it was by conſent, and in caſe of the proprietor himſelf; but in regard that in this caſe the plaintiff was a purchaſer without notice, there was no reaſon, and a prohibition was granted. S. C. 1 *Salk.* 33. *Carth.* 518. Ld. *Raymond*, *p.* 576, 577, 578. *Clay* verſ. *Snelgrave*.

Ballam libelled in the admiralty againſt a ſhip of *Norway*, for that ſhe being in great diſtreſs for want of an anchor and cable, the maſter contracted with *Ballam*, who delivered them on board, &c. upon which a motion was made in this court for a prohibition to be directed to the judge of the admiralty, to prohibit him from proceeding in the ſaid ſuit, upon a ſuggeſtion that the ſaid contract was made upon the land, viz. at *Ratcliffe*, upon the river *Thames*, the ſaid ſhip being then there; and a rule was made, that the defendant ſhould ſhew cauſe why a prohibition ſhould not go; upon which it was ſhewed for cauſe, 1. That of late times the admiralty had been always encouraged, and that they ought to have cognizance of all things incident to the navigation, therefore they ſhall have cognizance of a ſuit for mariners wages. 2. That in this caſe the defendant would be without remedy, if a prohibition ſhould be granted; becauſe the maſter of the ſhip with whom the contract was made, was dead, and the port owners were foreigners. 3. That the contract being upon the land will not hinder the admiralty to hold plea, as was held in the caſe of *Coſtard* v. *Lewſtie*, where a libel was in the admiralty againſt a ſhip upon a hypothecation made of her at land, and that appeared upon the inſtrument of hypothecation, which mentioned it to have been made at *Rotterdam*; and yet a prohibition was denied after great conſideration. Now here, though the anchor, &c. were ſold upon the land, yet the ſtreſs of weather

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which diſabled the ſhip, was upon the high ſea, and therefore the original cauſe being within the juriſdiction of the admiralty, will draw the reſidue to it as incident. *Sed non allocatur*, for, *per curiam*, this is not like the caſe of *Coſtard*, v. *Lewſtie*, 1. Becauſe it does not appear in this caſe, that this ſhip was in her voyage when ſhe became in diſtreſs, for want of an anchor, &c. and at the time of the contract. 2. There was no hypothecation here, as there was in the caſe cited; now where there is an hypothecation, if the admiralty ſhould be prohibited to proceed, &c. the party would be without remedy, for no ſuit can be againſt the ſhip at common law upon it. Now it is true, that by the maritime law every contract with the maſter of a ſhip implies an hypothecation; but it is otherwiſe by the law of *England*; therefore this being a contract made with the maſter upon the land, it is the common caſe; the admiralty cannot have cognizance of ſuch a ſuit, and therefore a prohibition was granted: But, at the importunity of the defendant's council, the court gave order that the plaintiff ſhould declare upon it, &c. S. C. 1 *Salk.* 34. Ld. *Raymond*, *p.* 805, 806. *Mich.* Term, 1 *Ann.* Reg. *Juſtin* verſ. *Ballam.* 2 Roll. Rep. 111, 9.

WATSON was maſter of a merchant ſhip, which was taken at ſea by a *French* privateer; *Watſon* agreed with the captain of the privateer for the ranſom of the ſhip and goods at 1200l. and as a pledge or ſecurity for the payment of the money, *Watſon* was detained and carried into *France*; but the ſhip and goods were releaſed, and brought into *Briſtol*, where the ſhip was unladed, and the goods landed, (after cuſtom paid) and delivered to one *Day*; but whether in truſt for the benefit of the maſter, or for the uſe of the owners, was not agreed. *Watſon* commences his ſuit in the court of admiralty againſt the owners, to compel them to pay the 1200l. and redeem him; and thereupon a warrant was iſſued out of that court to arreſt the ſhip and goods, *in quâdam cauſâ ſalvagii*, in order to compel the defendant to appear there, and the ſhip and goods were ſeized thereon: A prohibition was prayed as to the goods, ſuggeſting the ſeizure on land *infra corpus comitatûs*, and ſo not within their juriſdiction; it was inſiſted, that the maſter had no power to make ſuch an agreement, nor to ſubject the goods to the payment of his ranſom, without the expreſs authority and conſent of his owners. The power of hypothecation in a voyage for neceſſaries is incident to his office, and allowed for the neceſſity of the thing, and the benefit of the owner; but this is not ſo, for this is a redemption, and a new buying of the ſhip; and if this be allowed lawful, it will give a power to the maſter to do an injury to the owners, by obliging them to the performance of an agreement of his making, upon any terms never ſo unreaſonable, and to compel them to pay more than the ſhip and goods are worth, as the agreement in this caſe is: Beſides, the power of the maſter is only over the ſhip, and he has no power over the goods and lading to make any diſpoſition thereof; admitting the maſter has ſuch power to ſubject the goods to the payment of his ranſom, yet he ought not to bring the ſuit in his own name, but the ſuit ought to be carried on in the name of the vendee, or purchaſer of the goods. Admitting this ſuit proper, yet the ſeizure is illegal; for the court of admiralty cannot award ſuch proceſs; as their firſt proceſs to compel the party to appear is in the nature of an execution againſt the goods, and they can no more begin with ſuch proceſs than an inferior court; and as a prohibition ſhall be awarded to any inferior court, in ſuch caſes, ſo ought it in this, though the party have not yet appeared, nor any libel be as yet exhibited; and ſo was it done in the caſe of capt. *Sands* and Sir *Joſiah Child*, 5 *Will.* and *Mar.* S. C. *Salk.* 35. Ld. *Raymond*, *p.* 931, 932, 933, 934. *Tranter* verſ. *Watſon.* *Trinity* term. 2 *Ann.* Reginæ.

On the other ſide it was inſiſted, that no prohibition ought to go in this caſe, for that the maſter has power in this caſe, to ſubject the goods to the payment of his redemption; and it is founded on the ſame reaſon as his power of hypothecation, the neceſſity of the thing, and the benefit of the owners, by parting with ſome part of the goods to ſave the reſt, whereas otherwiſe the whole would have been loſt; ſo is *Molloy* 213, 214. *Hob.* 11, 12. but this being a matter and a cauſe properly within the juriſdiction of the court of admiralty, ſhall be determined there: And in a maritime cauſe, whereof they have cognizance, the proceſs of the court may be executed upon land, *infra corpus comitatûs*, &c. As to the objection that the ſuit *in curiâ admiralitatis* ought not to be in the maſter's name, it was anſwered, that it is moſt proper in his name, for the captors to whom the ranſom belongs, and who have the maſter in their cuſtody, cannot ſue in

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their own name, becauſe they are enemies; but if the ſuit be not carried on between proper parties, it is good cauſe for an appeal, and ſhall be determined by the rules of the marine law, but it is no ground for a prohibition. But admitting the merits of the cauſe to be againſt the maſter, yet the owners come too ſoon for a prohibition before they have appeared, and before any libel exhibited, ſo that it cannot appear to this court what the nature of the ſuit is.

The court deſired to hear a civilian before they made any rule in this caſe, and accordingly Dr. *Lane* attended for the plaintiff *in curiâ admiralitatis:* He argued, that ſalvage, or *cauſa ſalvagii*, as is mentioned in the warrant, is of admiralty juriſdiction; that the maſter repreſents both the owners of the ſhip and the traders, and has a truſt repoſed in him, which extends to the goods as well as the ſhip; the maſter may detain the goods of the merchant for the freight of the ſhip or wages of mariners. The maſter in this caſe, by the marine law, hath an hypothecation of the goods to him, to keep till payment be made of the money agreed, and not only a bare poſſeſſion; and therefore though he depart with the poſſeſſion of the goods before payment, that does not diveſt his intereſt. The goods were in the power and poſſeſſion of the enemy, who might have kept or deſtroyed them all, if they had not been redeemed by the maſter, which is for the benefit of the owners. Redemption, is a redemption by the maſter, who gives ſecurity for the payment of the money agreed, by ſubjecting his perſon as a pawn or pledge, ſo that he has, as it were, paid for the goods. This power of redemption is not founded on the *Rhodian* laws, or the laws of *Oleron*, but ariſes from the cuſtom and law of nations, and the ſame cuſtom or law gives the maſter in this caſe an intereſt in the ſhip and goods.

It was agreed by the whole court, that no prohibition ſhould be granted in this caſe.

Holt, chief juſtice, ſaid, that it ſeemed very juſt and reaſonable in this caſe, that the owners of the goods ought to pay the redemption. If a pirate ſhould take the ſhip and goods, and the maſter redeem them, the owners ſhall make him ſatisfaction; and then much more in this caſe, when taken by an enemy. When the maſter makes a compoſition for the benefit of the owners, it is highly reaſonable that he ſhould be indemnified. The whole ſhip and goods would have been prize, if he had not made this compoſition; therefore where there is an inſtant danger of loſing ſhip and goods (as in this caſe, when they were under the capture and power of the enemy) and no hopes of ſaving them then appears (though afterwards it may happen that the ſhip may be reſcued on freſh purſuit) cannot the maſter make ſuch an agreement as this, as well as he may throw part of the goods overboard in caſe of a tempeſt, to ſave the reſt? The maſter has the cuſtody and care of the ſhip and goods: Suppoſing then that the maſter has ſuch a power of compounding, the goods then remain to him as a ſecurity, and he may detain them till payment, as he may for freight; but then it is to be conſidered, whether, when he has once delivered them to the owner, or to his uſe, he has not departed with his ſecurity, and has no way to come at them again, as it is in caſe of freight. Theſe things are conſiderable if we go into the merits of the cauſe, but that not being before us, I give no opinion therein.

A ſhip was outward bound to and being in diſtreſs at ſea in her voyage put into *Boſton* in *New-England*, and there the maſter took up money, which he applied in neceſſaries for the ſhip; and, as a ſecurity for the repayment, by way of hypothecation, made a bill of ſale to the party, of part of the ſhip, who now libelled in the court of admiralty againſt the ſhip and owners, to compel the payment of the money. Serjeant *Darnall* moved for a prohibition, and a day was given to hear counſel on both ſides. On the day, ſerjeant *Darnall* inſiſted, that as this caſe is, there ought to go a prohibition, becauſe it appears, upon the face of the libel, that this hypothecation was upon land in port, viz. at *Boſton*, and not upon the ſea, as it ought to be, to give that court a juriſdiction. Beſides this appears to be a bill of ſale of part of the ſhip, upon which the party may have his remedy at common law, and not a proper hypothecation. Alſo the proceedings are againſt the owners as well as againſt the ſhip; and, if the owners are liable, they are chargeable at common law. S. C. *Salk.* 35. Ld. *Raymond*, p. 982, 983, and 984. *Trinity* term. 2 *Ann.* Reg. *Johnſon* verſ. *Shippen*.

Mr. Cheſtyre againſt the prohibition. It makes no difference whether the hypothecation were upon the ſea or upon land, being done in a voyage; and a prohibition has been denied upon the ſame point as this caſe, in this court, between *Coſtard* and *Louthesly*, *Trin.* 1 *Will. & Mar.* where the hypothecation was in port, viz. at *Rotterdam*. The ſame was adjudged here, *Hil.* 1696, between *Benoir* and *Jeffrys*; and about a year ſince between *Juſtin* and *Ballam*, a prohibition was granted, becauſe it did not appear there was any hypothecation. In this caſe the neceſſity of the thing requires that it be done at land and it would be prejudicial to navigation, if this ſuit in the admiralty ſhould not be. Vide ante.

Holt, chief juſtice. The caſe of *Coſtard* and *Louthesly* was the ſame as this; and there, on a demurrer to a declaration in a prohibition, a conſultation was awarded by the whole court. When an hypothecation is made, either for money to buy neceſſaries, or for neceſſaries for the ſhip in a voyage, the court of admiralty have a juriſdiction, for the party has no other remedy; we cannot give him any remedy againſt the ſhip; and if the ſuit there ſhould not be allowed, the maſter will have no credit to take up neceſſaries for the uſe of the ſhip.

Powel, juſtice, of the ſame opinion.

Holt, chief juſtice. No maſter of a ſhip can have credit abroad, but upon the ſecurity by hypothecation; and ſhall we hinder the court of admiralty from giving remedy, when we can give none ourſelves? It will be the greateſt prejudice to trade that can be, to grant a prohibition in this caſe. Indeed, if a ſhip be hypothecated here in *England* before the voyage begin, that is not a matter within the juriſdiction of the court of admiralty, for it is a contract made here, and the owners can give ſecurity to perform the contract. Which *Powel* agreed. *See before.*

Holt, chief juſtice. There is no difference whether the hypothecation be alledged in the libel to be made in port, or appears ſo to be by the ſuggeſtion, as it was in the caſe of *Coſtard* and *Louthesly*; and as to what you ſay, that this is a bill of ſale, and ſo a remedy at law, that is not ſo, for the maſter has no authority to ſell any part of the ſhip, and his ſale transfers no property; but he may hypothecate. And ſince the proceedings in the court of admiralty are againſt the owners as well as againſt the ſhip, let a prohibition go *quoad* the proceedings againſt the owners, and let them go on to condemn the ſhip. To which the reſt of the judges agreed.

The preceding few caſes may ſerve to ſhow the power lodged in the captain to engage his ſhip for payment of what caſh he may take up for his repairs and uſe; and though the law diſallows of his ſelling her, yet ſhe is obliged for the fulfilling his contracts ſo far as her value, and that of her freight (as has been ſhewn before); though he on his part muſt give a juſt account to the owners, how the money he has received was expended, and is conſequently anſwerable to them for the ſame, and to act upon the truſt repoſed in him, and the good conduct expected from him.

He muſt not carry any counterfeit cockets or other fictitious and colourable ſhip-papers, that may occaſionally involve the goods of the innocent with the nocent. 13 R. II. C. 9.

Nor muſt he refuſe the payment of any juſt and ordinary duties and port charges, cuſtoms or impoſts, to the hazard of any part of his lading; yet if he offers that which is due and he ought to pay, then he is excuſed. *Leg. Oleron*, 24.

Boats, anchors, and ſails are diſtrainable if the maſter refuſes to pay port duties, but no part of the cargo, for the ſhip and its maſters are anſwerable for theſe duties, as was adjudged in favour of the mayor and burgeſſes of *Newcaſtle*, *Salkeld*, 249, *Michaelmas term*, 10 *Will.* III. But chief juſtice *Holt* gave a ſeparate opinion from the court, that the cargo is likewiſe liable. It is, however, the ſafeſt way to diſtrain things belonging to the ſhip, or to the maſter.

In ſome foreign ports it is the practice, upon any diſpute reſpecting the payment of harbour dues and fees, and the refuſal of the payment of debts contracted by the maſter, to unhang the rudder of the ſhip, and to deliver it to the quay-maſter or ſome other officer of the place, till the matter in litigation is decided, or ſatisfaction is made for the demands of the creditors on the maſter. This is the eſtabliſhed cuſtom at Oſtend in particular, and as it abſolutely prevents the ſailing of a ſhip on her voyage, ſhould be carefully

carefully attended to by the owners and freighters, in their orders to their agents in ſuch ports, that they may readily make themſelves reſponſible in ſuch caſes, and there by guard againſt the conſequences of the obſtinacy and perverſeneſs of many maſters, who very often will not ſubmit to the advice of the agent or factor to whom the ſhip is conſigned.

Every maſter ought carefully to examine his rigging and tackle before proceeding on a voyage, that he may not ſail with any inſufficient and defective; nor ought he to go with fewer or ſmaller cables than is uſual and requiſite for a ſhip of equal burthen with his; for, if any damage happens in delivering the goods, either in a lighter or otherwiſe, by the breaking of a rope or the like, he muſt be anſwerable for it; but when once out of his cuſtody, he is no further reſponſible; ſo that if on taking them out of the lighter at the wharf or key, they are any ways damnified, the wharfinger then (and not the maſter) muſt be accountable for it. But if fine goods, or the like, are put into a cloſe lighter, to be conveyed from the ſhip to the key, it is uſual in this caſe for the maſter to ſend a competent number of his mariners to look to the merchandiſe, and if then any part thereof be loſt or embezzled, the maſter is reſponſible *, and not the wharfinger; but if ſuch goods are to be ſent on board a ſhip, there the wharfinger at his peril muſt take care that the ſame be preſerved.

On his arrival at his deſtined port, his firſt care ſhould be to ſee his ſhip well anchored and moored, and, after ſhe is reladen, not to depart till ſhe is cleared; for if any damage happens through his, or his mariner's fault or neglect, whereby the cargo is prejudiced, he muſt anſwer the ſame. 18 *Eliz.* C. 9. 14 *Car.* II. C. I.

If there is a conſul or vice-conſul appointed by his ſovereign, or by any commercial company authoriſed by the crown, to appoint ſuch an officer, reſident at the port where any merchant ſhip arrives, it is the duty of the maſter to report his arrival with his own name, the name of the ſhip, and whereof her cargo principally conſiſts, and to put himſelf under his protection, as far as his authority extends, during his ſtay in port. If the maſter does not conform to the legal orders of the conſul of his nation, and any *accident* or damage happens to his ſhip or cargo, he will be anſwerable, and not the owners or freighters. As in the following caſe: A maſter of an Engliſh ſhip had moored her in the harbour of Oſtend, in a place judged improper by the quay-maſter; on being ordered to remove her to another, he refuſed to obey either the quay-maſter, or the conſul. The quay-maſter thereupon cut the cables, and the ſhip being adrift, bulged againſt the oppoſite ſide of the baſon, and was conſiderably damaged. The conſul, at the requeſt of the merchant to whom the cargo was conſigned, proteſted againſt the maſter, in favour of the owners, and he paid the damages. He would have been impriſoned by the magiſtrates of Oſtend, if the conſul had not interceded.

And as the law ſubjects him to the aforeſaid things in port, ſo it does to many others in his voyage; as that if he deviates in his courſe without juſt cauſe, or ſteers a dangerous and unuſual one, when he may have a more ſecure paſſage (though to avoid illegal impoſitions he may ſomewhat change it); nor may he ſail by places infeſted by pirates, enemies, or other places notoriouſly known to be unſafe, nor engage his veſſel among rocks, or remarkable ſands, not being neceſſitated thereto by violence of wind and weather, or deluded by falſe lights. Digeſt. L. Cum in Debito F. de Probat. Lib. 1. Cod. de Navibus non excuſ.

No maſter is anſwerable for the contracts of his mariners, unleſs he has recommended them to credit, but they may be detained for debts, or miſdemeanours.

He that will charge a maſter with a fault in relation to his duty, by the marine law, muſt not think that a general charge is ſufficient, but he ought to aſſign and ſpecify the very fault wherewith he is ſo charged.

So he that will infer, that ſuch or ſuch a ſad diſaſter hath happened, or been occaſioned by reaſon of ſome fault in the mariners, muſt not only prove the fault itſelf, but muſt alſo prove the fault did diſpoſe to ſuch a ſad event; or that ſuch a misfortune could not have happened, without ſuch a fault precedent.

If an infant, being maſter of a ſhip, contracts to bring goods from any port to *England*, and there to deliver them, but does not deliver them according to agreement, but waſtes and conſumes them, he may be ſued in the admiralty court although he be an infant; for this ſuit is but in nature of a *Detinue* or a *Trover* and *Converſion* at the common

* Paſch. 26 *Car.* ruled at Guildhall by L. C. *Holt*

common law; and a prohibition denied for that cauſe. 1 *Rolls* Abr. 530. *Furnes* verſ. *Smith.*

A maſter can let out his veſſel to freight, take in goods and paſſengers, mend and furniſh his ſhip, and to that effect he may (if need be) in a ſtrange country, borrow money upon the ſhip, ſome of the tackle, or ſell ſome of the merchandiſe; and in this latter caſe, the higheſt price that the remainder is ſold for, muſt be paid to the merchant or owner of them, who in return muſt pay freight as well for what (through neceſſity) was ſo ſold, as for what remained. *Leg. Oleron* 1. But if the ſhip in the voyage afterwards ſhould happen to be caſt away, then only ſhall be tendered the price that the goods were bought for.

By the *common law*, the maſter of a ſhip ſhould not impawn the ſhip or goods; for any property, either general or ſpecial, was not in him, nor is ſuch power given unto him by the conſtituting of him a maſter. Yet the *common law* hath held the law of *Oleron* reaſonable, that if a ſhip ſprings a leak at ſea, or is in want of victuals and other neceſſaries, whereby ſhe is either in danger, or the voyage may be defeated, that in ſuch caſe of neceſſity the maſter may impawn for money, or other things, to relieve ſuch extremities, by employing the ſame to that end; and therefore he being the perſon truſted with the ſhip and the voyage may be reaſonably thought to have the power given to him implicitly, rather than to ſee the whole loſt. *Leg. Oleron.* C. 22. *Hob.* 11, 12. *Latch* 252. *Noy* 96. *Mo.* 918. *Leg. Oleron.* C. 2. 12. *Salk.* 34. pl. 1.

The maſter of a ſhip putting into port by ſtreſs of weather on his voyage, and having no money may hypothecate, or mortgage the ſhip, for neceſſaries or repairs, and the owners muſt indemnify him; but he cannot ſell the ſhip, neither ought he, except in the caſe of extreme neceſſity, to ſell any part of his cargo. Indeed this neceſſity can ſcarce ever happen, unleſs a ſhip is driven into a place inhabited by barbarians; for it is uſual in the ports of all civilized nations, to take the maſter's bills of exchange on the owners or freighters for repairs or proviſions. 2 *Vernon* 645. *In Chancery* 1709.

But if the maſter takes up money to repair or victual a ſhip when there is no occaſion, he only ſhall become debtor; or if he takes up more money than was neceſſary, ſo that the lender advances a far greater ſum than was wanted, the owners ſhall not be liable; for this would be to encourage colluſion between the maſters and foreign agents or merchants ſupplying them, ſuppoſing both to have fraudulent deſigns. The maſter therefore ought to be furniſhed by the party who has undertaken the repairs or victualling in the foreign port, with fair atteſted bills of the neceſſary acts done for the ſhip, and of the money advanced for the ſame.

But a maſter for any debt of his own cannot legally impawn or hypothecate the ſhip, &c. for the ſame is no ways liable, but in caſe of neceſſity, for the relief and completing of the voyage.

Nor can he ſell or diſpoſe of the ſame without an authority or licence from the owners; and when he does impawn or hypothecate the veſſel or furniture, he ought to have the conſent and advice of his mariners. 1 *Siderf.* 453. *vide* 1 Rolls Abr. 530. Rolls 2.

A ſhip being repaired, &c. in the *Thames*, he is not liable, but the owners. *Pere Will.* 367.

Though the maſter cannot on every caſe of neceſſity impawn the veſſel or furniture, for if ſhe be freighted, and he being (an owner) is to join with the reſt in buying proviſions for the voyage, and perhaps he wants money (a great ſign of neceſſity) yet cannot he impawn the veſſel or furniture, otherwiſe, or for more, than his own ſhare in her, the which he may transfer and grant, as a man may do an eighth or fifth part in land or houſes; but ſuch obligation of the veſſel muſt be in foreign parts or places where the calamity or neceſſity is univerſal on the veſſel, that will oblige all the owners. L. *Raym.* 152. Judgment *Oleron.* C. 22.

If the veſſel happens afterwards to be caſt away, and the mariners by their great pains and care recover ſome of the wreck and lading, the maſter in that caſe may pledge the ſame, and diſtribute the product among his diſtreſſed ſailors, in order to their carrying them home to their own country: but, if the mariners no way contributed to the ſalvage, then their reward is loſt and ſunk withthe veſſel. And if there be any con-

conſiderable part of the cargo ſaved, he ought not to diſmiſs the mariners till advice from the freighters or laders; for otherwiſe, perchance, he may be made liable. Judgment. *Oleron.* C. 3.

If merchants freight a veſſel at their own charges, and ſet her to ſea, and ſhe happens afterwards to be weather-bound, the maſter may impawn either the ſhip or lading at his pleaſure, or at leaſt ſuch as he could moſt conveniently raiſe money on, rather than ſee the whole voyage overſet or loſt; and, if he cannot pawn the lading, he may ſell the ſame, that is ſo much as is neceſſary; in all which caſes his act obliges; however, orders and inſtructions from his owners are as carefully to be regarded and followed as the *magnet*. *Leg. Oleron.* C. 22.

When a maſter ſhall arrive with his ſhip at *Graveſend*, he ſhall not be above three days coming from thence to the place of diſcharge; nor is he to touch at any quay or wharf till he comes to *Cheſter* quay, unleſs hindered by contrary winds or draught of water, or other juſt impediment, to be allowed by the officers: and likewiſe he or his purſer are there to make oath of the burthen, contents, and lading of his ſhip; and of the marks, number, contents, and qualities of every parcel of goods therein laden, to the beſt of his knowledge; alſo where, and in what port, ſhe took her lading, in what country built, and how manned, who the maſter during the voyage, and who the owners; and in out-ports muſt come up to the place of unlading, as the condition of the port requires, and make entries on pain of 100l.——Nor is ſuch a maſter to lade aboard any goods outward to any place whatſoever, without entering the ſhip at the cuſtom-houſe, her captain, maſter, burthen, guns, ammunition, and to what place ſhe intends, and before departure to bring in a note under his hand, of every merchant that ſhall have laid aboard any goods, together with the marks and numbers of ſuch goods, and be ſworn as to the ſame, on pain of 100l. 12 *Car.* II. C. 18.

Note, There is a liſt of all foreign built ſhips in the exchequer.

The mate of a ſhip, as well as a ſingle mariner (or a number of them) may ſue in the admiralty court for their wages, as the mate only differs from the ſailors in title, being a ſervant to the maſter with whom he contracts as the mariners do. Ld. *Raymond* p. 398, 632.

Upon a motion for a new trial in an action for a ſeaman's wages, *Holt*, chief juſtice, ſaid, that if the ſhip be loſt before the firſt port of delivery, then the ſeamen loſe all their wages; but, if after ſhe has been at the firſt port of delivery, then they loſe only thoſe from the laſt port of delivery; but if they run away, although they have been at a port of delivery, yet they loſe all their wages. *Ex relatione m'ri Jacob.* Ld. *Raymond*, p. 693.

If a ſhip be taken by the enemy before ſhe arrives at her firſt port of delivery, the ſeamen cannot recover any wages; but if ſhe has delivered her cargo, and is taken on her return, they will recover wages for the outward-bound voyage, and half the time of delivering the cargo at the firſt port of delivery, and no more. As was adjudged in the caſe of ſeamen belonging to an Eaſt Indiaman, taken by the French on her return home, by chief juſtice *Holt*. See Raymond's Reports, 739, 10 *Will.* III.

In an action brought for mariners wages, for a voyage from *Carolina* to *London*, it appeared, that the plaintiff ſerved three or four months; and before the ſhip came to *London*, which was the delivering port, he was impreſſed into the queen's ſervice, and afterwards the ſhip arrived at the delivering port; and ruled by *Holt* on evidence at *Guildhall*, that the plaintiff ſhould recover *pro tanto* as he ſerved, the ſhip coming ſafe to the delivering port. Afterwards, in another cauſe in ſuch an action it appeared that the plaintiff was hired by the defendant at *Carolina*, to ſerve on board the *Jane* ſloop, whereof the defendant was maſter, from *Carolina* to *England*, at 3l. *per* month; that he ſerved two months, then the ſhip was taken by a French privateer, and ranſomed, and, juſt as ſhe came off *Plymouth*, the plaintiff was impreſſed, &c. and then the ſhip came ſafe into the river *Thames*, where ſhe diſpoſed of her cargo; and, by *Holt* the plaintiff can have no wages, the ſhip having been taken by the enemy and ranſomed. Mr. Raymond inſiſted that in that caſe he ſhould recover *pro rata*, and that the uſage among merchants was ſo; which *Holt* ſaid, if he could prove, it would do; but, wanting proof of it, the plaintiff was nonſuited. Ditto, p. 1211, 1212. *Mich.* term. 4 *Ann.* Reg. *Wiggins* verſ. *Ingleton, Chandler* verſ. *Meade*.

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The ſuit here was for ſeamen's wages, upon the arrival of the ſhip at *Guinea*. *Powell*, juſtice, ſaid, he remembered a caſe of the like nature, where a ſuit was commenced in the court of admiralty, by ſailors for their wages, upon the arrival of the ſhip at *Newfoundland*; and though the merchants all held it no port of delivery, yet the court of admiralty held it the contrary, and ſo did the court of common-pleas, upon a motion for a prohibition. Ld. *Raymond*, p. 1428. *Brown* verſ. *Benn* & alios. *Eaſt*. Term. 5 *Ann*. Reg.

1247

Every ſeaman that ſhall ſerve in any of his majeſty's ſhips, or in any ſhip belonging to any ſubject of his majeſty's dominions, ſhall allow out of the wages for ſuch ſervice 6d. *per menſem*, for ſupport of *Greenwich* hoſpital, &c. which monthly allowance ſhall be collected as ſhall be appointed by the commiſſioners for executing the office of lord high admiral. 7 and 8 *Will*. III. C. 21. S. 10.

Licences ſhall be given, by order of his majeſty, or the commiſſioners of the admiralty, to any landmen deſirous to apply themſelves to the ſea-ſervice, to ſerve in merchant ſhips or other trading veſſels, which ſhall be a protection againſt being impreſſed, for two years following the date of ſuch licence; provided that ſuch landmen bring to the regiſter two inhabitants, or known in the place where they ſo enter themſelves, who ſhall aſſert their knowledge of ſuch landmen for two years paſt, and in what buſineſs they have known them employed; and, if any perſon ſhall vouch any one for a landman who ſhall be proved to be a ſeaman, he ſhall forfeit 20l. and any ſeaman taking another's name, or any perſon counterfeiting any licence, ſhall forfeit 20l. and be liable to ſuch further puniſhment, as by law may be inflicted for ſuch miſdemeanour. Ditto, S. 15.

For the better collecting the duty of 6d. *per menſem*, granted by the 7 *Will*. III. cap. 21. it ſhall be lawful for the commiſſioners for regiſtering of ſeamen, or their deputies, by warrant, to cauſe all maſters of ſhips, not in his majeſty's ſervice to appear before them, and ſuch maſters upon oath to examine, as to the number, wages, and time of ſervice, of every perſon belonging to ſuch ſhips; and if ſuch maſters ſhall refuſe to appear, or ſhall obſtinately refuſe to give a diſcovery of the maſters aforeſaid, upon their oaths, ſuch offenders ſhall forfeit 10l. to the uſes mentioned in the ſaid act, to be recovered by action, &c. 8 and 9 *Will*. III. C. 23. S. 6.

Repealed as to the regiſtering of ſeamen, by 9 Ann. *Cap*. 21. *Sect*. 64.

The commiſſioners, &c. ſhall take the ſolemn affirmation of quakers, inſtead of their oath. 8 and 9 *Will*. III. C. 23.

Foraſmuch as divers perſons have perſonated ſeamen, who have ſerved or are ſuppoſed to have ſerved on board his majeſty's ſhips, and thereby have received money at the pay-office, or elſewhere, and have alſo forged letters of attorney or bills of ſale, aſſignments, or laſt wills, in the names of perſons who have ſerved, or were ſuppoſed to have ſerved, on board his majeſty's ſhips and do alſo procure men and women to perſonate, and divers wicked people do of their own accord perſonate, the wives, relations or creditors of ſuch ſeamen, and thereby have falſely taken out letters of adminiſtration to ſuch ſeamen, or have forged letters of attorney, bills of ſale, or other authorities, in the names of the executors or adminiſtrators of ſuch ſeamen for the receipt of ſuch wages; every ſuch perſon, their aiders or abettors, that ſhall be convicted of the ſaid crimes, ſhall over and above the penalties inflicted by any laws in force forfeit 200l. with coſts, &c. 9 and 10 *Will*. III. C. 41. S. 3.

No will of any ſeaman contained in the ſame inſtrument, paper, or parchment with a letter of attorney ſhall be good in law. Ditto, S. 6.

No perſon ſhall take more than 1s. for the ſeal, writing or ſuing forth letters of adminiſtration, granted to the wife or children of any ſeaman dying in the pay of his majeſty's navy, unleſs the goods of ſuch ſeaman amount to 20l. and if any officer take more he ſhall forfeit to the party grieved 10l. Ditto, S. 7.

It ſhall be lawful for two juſtices of peace, as alſo for mayors, aldermen, bailiffs, and other chief officers and magiſtrates of any city, or town corporate; and likewiſe for the church-wardens and overſeers of the poor of the ſeveral pariſhes, with the approbation of ſuch juſtices of peace, mayors, &c. to bind out any boys of the age of ten years or upwards, or who ſhall be chargeable, or whoſe parents are chargeable to the pariſh, or who ſhall beg for alms, to be apprentices to the ſea-ſervice, to any of her majeſty's

majeſty's ſubjects, maſters or owners of any ſhip belonging to any port within *England*, *Wales*, or *Berwick*, until ſuch boys ſhall attain the age of twenty-one years; and the age of every ſuch boy ſhall be mentioned in his indentures, taken from a copy of the regiſter book, wherein the time of his being baptized is entered (where the ſame can be had) which copy ſhall be given and atteſted by the miniſter or curate of ſuch pariſh, without fee, and may be wrote without ſtamp: and where no ſuch entry can be found, ſuch juſtices, mayors, &c. ſhall inform themſelves of ſuch boy's age, and inſert the ſame in the indentures; and the age ſo inſerted, ſhall be taken to be his true age. 2 *Ann.* C. 6. S. 1.

The church-wardens and overſeers of the pariſh, from whence ſuch boy ſhall be bound apprentice, ſhall pay to ſuch maſter, at the time of his binding, 50s. to provide cloathing and bedding. S. 2.

The overſeers of the poor of every townſhip or village may execute the powers hereby directed. S. 3.

No ſuch apprentice ſhall be impreſſed, or ſuffered to enter into her majeſty's ſervice, till he arrive to the age of eighteen years. S. 4.

The church-wardens and overſeers ſhall ſend the indentures to the collector of cuſtoms, reſiding at any port whereunto ſuch maſters of ſuch ſhip belong; who ſhall enter all indentures ſo ſent and make an endorſement of the regiſtry thereof, without fee; and ſuch collector, neglecting to enter ſuch indentures, and endorſe the ſame, or making falſe entries, ſhall forfeit 5l. to the uſe of the poor of the pariſh, from whence ſuch boy was bound; and ſuch collector ſhall tranſmit certificates to the admiralty, containing the names and ages of every ſuch apprentice, and to what ſhip he belongs; and, upon receipt of ſuch certificates, protections ſhall be given for ſuch apprentices, till they attain their ages of eighteen years, without fee; which certificates are not required to be wrote on ſtamped paper, &c. S. 5.

Every perſon to whom any poor pariſh boy ſhall be put apprentice, according to 43 *Eliz.* Cap. 2. may with the approbation of two juſtices of peace of the county, dwelling in or near the pariſh where ſuch poor boy was bound, or with the approbation of any mayor, alderman, bailiff, or other chief officer or magiſtrate of any city, borough, or town corporate, where ſuch poor boy was bound by indenture, turn over ſuch poor boy apprentice to any maſter of ſuch ſhip, for the remaining time of his apprenticeſhip; all which indentures of aſſignment are to be regiſtered, and certificates thereof tranſmitted, by ſuch collector, at the ports where ſuch pariſh apprentices ſhall be ſo aſſigned over, in manner aforeſaid; and protections ſhall be given for ſuch apprentices, till they attain their age of eighteen years. S. 6.

All ſuch poor boys, till they attain their ages of eighteen years, ſhall be exempted from payment of 6d. *per* month to *Greenwich hoſpital*. S. 7.

All maſters or owners of ſhips of thirty to fifty tons ſhall be obliged to take one ſuch apprentice, and one more for the next fifty tons, and one more for every hundred tons ſuch ſhip ſhall exceed the burthen of one hundred tons; and ſuch maſter or owner refuſing to take ſuch apprentice, ſhall forfeit 10l. for the uſe of the poor of the pariſh from whence ſuch boy was bound. S. 8.

Every maſter or owner of ſuch ſhip, after his arrival into port, and before he clears out, ſhall give an account under his hand to the collector of ſuch port to which he belongs, containing the names of ſuch apprentices as are then in his ſervice. S. 9.

Every ſuch apprentice ſhall be ſent to the port to which his maſter ſhall belong by the church-wardens and overſeers of the pariſh from whence ſuch apprentice is bound; the charges to be provided, as the charges for ſending of vagrants. S. 10.

The counterpart of ſuch indentures ſhall be atteſted by the collector at the port (where ſuch apprentice ſhall be bound or aſſigned over) and the conſtable or other officer, who ſhall bring ſuch apprentices; which conſtable, &c. ſhall, tranſmit the counterparts of ſuch indentures to the church-wardens and overſeers of the pariſhes from whence ſuch apprentices ſhall be bound. S. 11.

Two juſtices of peace, dwelling in or near the ports, and all mayors, aldermen, bailiffs, and other chief officers and magiſtrates of any city, borough or town corporate, in, or near adjoining to ſuch port to which ſuch ſhip ſhall arrive, ſhall have power to inquire into, and examine, hear, and determine all complaints of ill uſage from the

maſters

maſters to ſuch apprentices, and alſo of all ſuch as ſhall voluntarily put themſelves apprentices to the ſea ſervice, as aforeſaid, as in other caſes between maſters and apprentices. 2 *Ann.* C. 6. S 12.

Every ſuch collector ſhall keep a regiſter, containing, as well the number and burthen of ſuch ſhip, together with the maſter's or owners' names, as alſo the names of ſuch apprentices in each ſhip belonging to their ports, and from what pariſhes ſuch apprentices were ſent; and ſhall tranſmit copies of ſuch regiſter to the quarter-ſeſſions, or to ſuch cities, boroughs, towns corporate, pariſhes, or places, when required, for which copies no fees ſhall be taken, &c. S. 13.

Every cuſtom-houſe officer, at each of the ports, ſhall inſert at the bottom of their cockets, the number of men and boys on board the ſhips, at their going out of every ſuch port, deſcribing the apprentices by their names, ages, and dates of their indentures, for which no fee ſhall be taken. S. 14.

Every perſon who ſhall voluntarily bind himſelf apprentice to any maſter or owner of a ſhip ſhall not be impreſſed into her majeſty's ſea ſervice during three years from the date of the indentures, which indentures are to be regiſtered, and certificates thereof tranſmitted by ſuch collector at the port where ſuch apprentices ſhall bind themſelves, as aforeſaid: Upon receipt of which, protections ſhall be given for the ſaid firſt three years of their apprenticeſhip, without fee. S. 15.

When pariſh children of the age of eighteen years, and other voluntary apprentices ſhall be impreſſed, or enter into her majeſty's ſervice, the maſters of ſuch apprentices ſhall be entitled to able ſeamen's wages for ſuch of their apprentices as ſhall upon examination be found qualified. S. 17.

No maſter ſhall be obliged to take any apprentice under the age of thirteen years, or who ſhall not appear to be fitly qualified, both as to health and ſtrength of body for that ſervice; and any widow of the maſter of ſuch ſhip, or the executor, or adminiſtrator of ſuch maſter, who ſhall have been obliged to take ſuch pariſh boys apprentice, ſhall have the ſame power of aſſigning over ſuch apprentices, to any other maſters of ſhips who have not their complement, as is given by the act, 2 *Ann.* Cap. 6. to ſuch perſons as have taken apprentices, in purſuance of the 43 *Eliz.* Cap. 2. 4 and 5 *Ann.* C. 19. S. 16.

No perſon of the age of eighteen years ſhall have any protection from her majeſty's ſea ſervice who have been in any ſea ſervice before the time they bound themſelves apprentices. 4 and 5 *Ann.* C. 19. S. 17.

To the intent that 6d. *per menſem*, may be effectually collected, every perſon that ſhall ſerve her majeſty or any other in any of her majeſty's ſhips, or in any ſhips belonging to ſubjects of *Great-Britain* or *Ireland*, or dominions thereunto belonging, and every maſter working in his own ſhip, whether employed upon the high ſea or coaſts, or in any port, bay, or creek (other than ſuch apprentices under the age of eighteen years as are exempted from payment of 6d. *per menſem*, by 2 *Ann.* cap. 6. and perſons employed in any boat upon the coaſts in taking of fiſh, which are brought freſh on ſhore into *Great-Britain* and *Ireland*, and perſons employed in boats that trade only from place to place, within any river, or in open boats upon the coaſts) ſhall pay the ſaid 6d. *per menſem*, for the ſupport of *Greenwich* hoſpital. 10 *Ann.* C. 17. S. 1.

The maſter of every ſhip, not in her majeſty's ſervice, is required to deduct out of the wages accruing to ſuch ſeamen 6d. *per menſem*, and pay the ſame to ſuch officers as ſhall be appointed by the commiſſioners for executing the office of lord high admiral. S. 2.

It ſhall be lawful for the commiſſioners executing the office of lord high admiral, to appoint receivers of the ſaid duty, and to authoriſe ſuch receivers to depute the collectors, or other officers of the cuſtoms, of the out ports and of the ports of *Ireland*, or ſuch other as they ſhall think fit, to collect the ſame; and it ſhall be lawful for the commiſſioners executing the office of lord high admiral, to make ſuch allowance to them out of the ſaid duties as they ſhall judge reaſonable. S. 3.

It ſhall be lawful for the ſaid receivers, or their deputies, by warrant to ſummon all maſters, or (in their abſence) the owners of ſhips not in her majeſty's ſervice, to appear at the office of the ſaid receivers, &c. ſo as the perſon ſummoned be not obliged to travel above ten miles) which receivers, or their deputies, are empowered to examine

every

every ſuch maſter or owner as to the number and times of ſervice of all perſons belonging to ſuch ſhips, who [illegible] chargeable with the ſaid 6d. *per menſem*; and, if ſuch maſters or owners ſhall refu[illegible] when ſummoned (not having a reaſonable excuſe) to appear, or if they ſhall obſtin[illegible]ly refuſe to make diſcovery of the matters aforeſaid upon their oaths, or ſhall neglect to pay the monies due to the hoſpital within fourteen days after they ſhall be cleared inwards, ſuch offenders ſhall forfeit 200l. &c. And if any ſuch maſter ſhall attempt to go to ſea with his ſhip, before he hath paid the ſaid duties for the voyage preceding, ſuch receivers, or their deputies, are impowered to ſtop ſuch ſhip, and upon the death or removal of any maſter, the owners ſhall deliver to the ſucceeding maſter a true account of the ſaid duty due to the hoſpital, and money ſufficient for the payment of the ſame, and in default thereof, ſuch receivers or their deputies, may ſtop ſuch ſhip from proceeding to ſea. 10 *Ann.* C. 17. S. 4.

In all caſes where by this act an oath is required to be taken, the ſolemn affirmation of quakers ſhall be accepted inſtead of ſuch oath; and, in caſe any quaker ſhall, upon ſuch affirmation, declare any matter which ſhall be falſe, or if any other perſon ſhall, purſuant to this act, willingly make a falſe oath, (he being lawfully convicted) ſhall ſuffer like puniſhment, as perſons convicted of wilful perjury. Ditto, S. 5.

No private contracts made by any ſeamen ſhall obſtruct or delay the payment of the duties appropriated to the ſaid hoſpital. Ditto, S. 6.

This act ſhall be a publick act, &c. Ditto, S. 7.

Nothing in this act ſhall oblige the payment of 6d. *per menſem*, by any maſters or ſervants of the hoys or veſſels belonging to the port of *London*, and employed within the *North Foreland*, in bringing corn, fiſh, or other proviſions, for *London*. Ditto, S. 8

The commiſſioners of the admiralty ſhall conſider as qualified for an admiſſion into the ſaid hoſpital, any ſeaman who ſhall offer himſelf to be admitted, and ſhall produce a certificate of his having been wounded or hurt in defending any ſhip belonging to the ſubjects of her majeſty againſt enemies, or in taking any ſhip from the enemy, and thereby diſabled from ſea ſervice. *This Sect. confirmed by* 8 *Geo.* II. *cap.* 29. *ſect.* 10. Ditto, S. 20.

The governors, miniſters, and conſuls, appointed by his majeſty in foreign parts, or, where none ſuch are reſident, any two *Britiſh* merchants there reſiding, are required to ſend and provide for all ſeafaring men and boys, ſubjects of *Great-Britain*, that ſhall by ſhipwreck, capture, or other unavoidable accident, be driven or caſt away to ſuch foreign parts; and the ſaid governors, &c. are required to ſubſiſt ſuch ſeafaring men and boys, after the rate of 6d. *per diem* each, and to ſend bills of their diſburſements, with proper vouchers to the commiſſioners of the navy, who are to cauſe immediate payment to be made of ſuch bills; and the ſaid governors, &c. ſhall put the ſaid men and boys on board the firſt ſhip belonging to his majeſty that ſhall arrive at any parts within a convenient diſtance: And if no ſhip of war ſhall be within a convenient diſtance, they ſhall ſend the ſaid men and boys on board ſuch merchant ſhips as are bound for *Great-Britain*, and are in want of men to make up their complement; but if neither caſe happen, they ſhall provide a paſſage homeward for ſuch men and boys in the firſt merchant ſhip bound for *Great-Britain*; and every maſter of a merchant ſhip homeward bound from thence ſhall take on board ſo many of ſuch ſeafaring men and boys as the ſaid governors, &c. ſhall direct, not exceeding four for each hundred tons of his ſhip. 1 *Geo.* II. St. 2. C. 14. S. 12.

Every maſter of a veſſel who ſhall produce a certificate under the hands of the ſaid governors, &c. certifying the numbers and names of the men and boys taken on board by their direction, and the time of taking them, and ſhall make an affidavit at his return, ſetting forth the time during which he ſubſiſted them, and that he did not, during that time, want of his own complement of men, or how many he did want, and for what time, ſhall receive from the commiſſioners of the navy, 6d *per diem* for the paſſage and proviſions of each man and boy, from the day of their embarkation homewards, to the day of their arrival, or being put into ſome ſhip of war; 6d. *per diem* only being deducted for ſuch time as he wanted of his complement. Ditto, S. 13.

The ſeveral acts concerning the duty of 6d. *per* month, payable by all ſeamen, for ſupport of *Greenwich hoſpital*, ſhall extend to all ſhips belonging to his majeſty's ſubjects within the Iſlands of *Jerſey*, *Guernſey*, *Alderney*, *Sark*, and *Man*, and within all his ma-

jeſty's dominions in *America*, as well as to thoſe within *Great-Britain* and *Ireland*. 2 Geo. II. Cap. 7. Sect. 1.

For the better collecting the ſaid duties, it ſhall be lawful for the receivers thereof to depute any officer of the cuſtoms in the ſeveral ports of the ſaid iſlands and colonies, or ſuch other perſons as they ſhall think fit, to collect the ſame; and the commiſſioners of the admiralty may make ſuch allowance to them out of the ſaid duty as they ſhall judge reaſonable. Ditto, S. 2.

The collectors of the duties in the ports of the ſaid iſlands and colonies ſhall ſummon and examine upon oath all maſters and owners of ſhips belonging to his majeſty's ſubjects as by 10 *Ann.* Cap. 17. And if any ſuch maſter ſhall neglect to appear and make ſuch diſcovery, ſuch maſter, &c. ſhall forfeit 20l. money of *Great-Britain*. Dit. to, S. 3.

All maſters, &c. of ſhips belonging to the king's ſubjects, within the ſaid iſlands or colonies, ſhall pay ſuch part of the ſaid duty as ſhall be due at their arrival, and during their continuance in *Great-Britain* or *Ireland* within the ſaid kingdoms; and ſuch part as ſhall be due at the time of their return to, and during their continuance in the ſaid iſlands or colonies, within the ſaid iſlands and colonies; and all maſters, &c. of ſhips belonging to any ſubject of his majeſty within *Great-Britain* or *Ireland*, who ſhall trade from thence to any of the ſaid iſlands or colonies, ſhall pay the ſaid duty of 6d. *per* month, only in *Great-Britain* or *Ireland*. Ditto, S. 4.

It ſhall be lawful for the receivers of the duty, and their deputies, by warrant, to ſummon and examine upon oath all maſters, &c. of ſhips employed by the navy, victualling, ordnance, cuſtoms, poſt-office, or any other public offices of the crown, in the ſervice of his majeſty; and if ſuch maſter, &c. refuſe to appear, or to make diſcovery, or ſhall neglect to pay the ſaid duty, they ſhall forfeit 20l. Ditto, S. 5.

The ſecretaries or chief clerks of the navy, &c. uſually employing ſhipping for the ſervice of his majeſty, ſhall, on the firſt of *January* in each year, or within twenty days following, deliver into the office of the receiver of the duty in the port of *London*, a liſt of the ſhips, that, in the year preceding, ſhall have been employed by ſuch offices, and of all ſhips which remain in the ſervice of ſuch offices, and of ſuch as ſhall be diſcharged, and of the names of the maſters, &c. and the number of ſeamen employed in every ſuch ſhip; and no treaſurer, or other officer belonging to ſuch offices, ſhall make out or pay any bill for the freight of any ſhip ſo employed, or pay any wages to any maſter, &c. till ſuch maſter, &c. ſhall produce to ſuch treaſurer, &c. an acquittance ſigned by the receiver or his deputy, whereby it ſhall appear that ſuch maſter, &c. hath paid the ſaid duty of 6d. *per* month, and that he is not more than 30 days in arrear to the hoſpital; and if any default ſhall be made by any ſecretary, &c. he ſhall forfeit 50l. Ditto, S. 6.

All maſters of merchant ſhips, or other private veſſels, liable to the duty of 6d. *per* month, ſhall pay the ſaid duty before any ſuch ſhips ſhall be cleared inwards, in any of the ports of *Great-Britain* or *Ireland*, or the iſlands of *Guernſey*, *Jerſey*, &c. or of the colonies in *America*; and no officer of the cuſtoms ſhall clear inwards any merchant ſhip liable to the ſaid duty, or grant any warrant, to give or make out any cocket, *tranſiras*, returns, or diſcharges to ſuch ſhips, nor ſuffer them to go out of port till the maſter, &c. produce to the officer an acquittance ſigned by the receiver, whereby it ſhall appear, that ſuch maſter, &c. hath paid the ſaid duty, and that he is not more than thirty days in arrear: and every maſter of ſuch ſhip who ſhall neglect to pay the 6d. *per* month, alſo every officer of the cuſtoms who ſhall make default in the premiſes, ſhall forfeit 20l.

It ſhall not be lawful for any maſter of a ſhip, bound beyond the ſeas, to carry any mariner, except his apprentices, from the port where he was ſhipped to proceed on any voyage beyond the ſeas, without firſt coming to an agreement with ſuch mariners for their wages, which agreement ſhall be made in writing, declaring what wages each ſeaman is to have for ſo long time as they ſhall ſhip themſelves for, and alſo to expreſs in the agreement the voyage for which ſuch ſeamen was ſhipped; and if any ſuch maſter ſhall carry out any mariner, except his apprentice, upon any voyage beyond the ſeas, without firſt entering into ſuch agreement, and he and they ſigning the ſame, he ſhall forfeit 5l. for every ſuch mariner to the uſe of *Greenwich hoſpital*, to be recovered

recovered on information on the oath of one witneſs, &c. and in caſe he refuſes to pay the forfeiture, it ſhall be levied by diſtreſs, &c. 2 *Geo.* II. C. 36. S. 1.

If any ſeaman ſhip himſelf on board any merchant veſſel, on an intended voyage for parts beyond the ſeas, he ſhall be obliged to ſign ſuch agreement within three days after he ſhall have entered himſelf, which agreement ſhall be concluſive to all parties for the time contracted for. Ditto, S. 2.

If any ſeaman ſhall deſert, or refuſe to proceed on the voyage, or ſhall deſert in parts beyond the ſeas, after he ſhall have ſigned ſuch contracts, he ſhall forfeit to the owners of ſuch ſhip the wages due to him at the time of deſerting or refuſing to proceed on the voyage. Ditto, S. 3.

If any ſuch ſeaman ſhall deſert, or abſent himſelf from ſuch ſhip, after he hath ſigned ſuch contract, upon application made to any juſtice of the peace by the maſter, or other perſon having charge of the ſhip, it ſhall be lawful for ſuch juſtice to iſſue his warrant to apprehend ſuch ſeaman; and if he ſhall refuſe to proceed on the voyage, and ſhall not give a ſufficient reaſon for ſuch refuſal, to the ſatisfaction of the juſtice, to commit him to the houſe of correction, to be kept to hard labour, not exceeding thirty days, nor leſs than fourteen. Ditto, S. 4.

If any ſeaman ſhall abſent himſelf from the veſſel to which he belongs without leave of the maſter, or other chief officer having charge of ſuch ſhip, he ſhall for every day's abſence, forfeit two day's pay to the uſe of *Greenwich Hoſpital*. Ditto, S. 5.

If any ſeaman, not entering into the ſervice of his majeſty, ſhall leave the veſſel to which he belongs, before he ſhall have a diſcharge in writing from the maſter, or other perſon having charge of ſuch veſſel, he ſhall forfeit one month's pay. 2 *Geo.* II. C. 36. S. 6.

On the arrival of any veſſel into *Great Britain*, from parts beyond the ſeas, the maſters ſhall pay the ſeamen their wages, if demanded, in thirty days after the veſſel's being entered at the cuſtom-houſe; (except where a covenant ſhall be entered into to the contrary) or at the time the ſaid ſeamen ſhall be diſcharged, which ſhall firſt happen, deducting out of the wages, the penalties by this act impoſed, under penalty of paying to ſuch ſeamen that ſhall be unpaid 20s. over and above the wages to be recovered as the wages may be recovered; and ſuch payment of wages ſhall be good in law, notwithſtanding any action, bill of ſale, attachment, or incumbrance whatſoever. Ditto, S. 7.

No ſeaman, by ſigning ſuch contract, ſhall be deprived of uſing any means for the recovery of wages, which he may now lawfully uſe; and where it ſhall be neceſſary that the contract in writing ſhould be produced in court, no obligation ſhall lie on any ſeaman to produce the ſame, but the maſter or owner of the ſhip; and no ſeaman ſhall fail in any action or proceſs for recovery of wages, for want of ſuch contract being produced. Ditto, S. 8.

The maſters or owners of ſhips ſhall have power to deduct out of the wages of any ſeaman all penalties incurred by this act, and to enter them in a book, and to make oath, if required, to the truth thereof; which book ſhall be ſigned by the maſter and two principal officers belonging to ſuch ſhip, ſetting forth, that the penalties contained in ſuch book are the whole penalties ſtopt from any ſeaman during the voyage; which penalties (except the forfeiture of wages to the owners, on the deſertion of any ſeaman, or on refuſing to proceed on the voyage) ſhall go to the uſe of *Greenwich Hoſpital*, to be paid and accounted for by the maſters of ſhips coming from beyond the ſeas to the ſame officer at any port, who collects the 6d. *per* month, which officer ſhall have power to adminiſter an oath to every maſter touching the truth of ſuch penalties. Ditto, S. 9.

If any maſters or owners of ſhips ſhall deduct out of the wages of any ſeamen any of the penalties by this act directed, to the uſe of *Greenwich Hoſpital*, and ſhall not pay the money to ſome officer who collects the 6d. *per* month, in the port where the deduction ſhall be made, within three months after ſuch deduction, they ſhall forfeit treble the value to the uſe of the hoſpital; which, together with the money deducted, ſhall be recovered by the ſame means, as the penalties for not duly paying the 6d. *per* month. Ditto, S. 10.

This

This act ſhall be a public act. 2 *Geo.* II. C. 36. Sect. 11.

This act ſhall continue five years, &c. Ditto, S. 12.

Nothing in this act ſhall debar any ſeaman from entering into the ſervice of his majeſty; nor ſhall ſuch ſeaman for ſuch entry forfeit the wages due to him during his ſervice in ſuch merchant ſhip; nor ſhall ſuch entry be deemed a deſertion. Ditto, S. 13. *Continued by* 8 Geo. II. *Cap.* 21. *to* 25 March, 1749, *&c. Further continued by* 23 Geo. II. *p.* 487. *to* 25 March, 1764; *and from thence to the end of the then next ſeſſion of parliament.*

Where any goods ſhall be laden on board any *Engliſh* ſhip of the burden of two hundred tons or upwards, and mounted with ſixteen guns or more, if the commander ſhall yield up the goods to any *Turkiſh* ſhips, or to any pirates or ſea rovers, without fighting, he ſhall upon proof thereof made in the court of admiralty, be incapable of taking charge of any *Engliſh* ſhip as commander; and if he ſhall hereafter take upon him to command any *Engliſh* ſhip, he ſhall ſuffer impriſonment by warrant from the ſaid court, during ſix months for every offence; and in caſe the perſons taking the ſaid goods ſhall releaſe the ſhip, or pay unto the maſter any money or goods for freight, or other reward, the ſaid goods or money, or the value thereof, as alſo the maſter's part of ſuch ſhips ſo releaſed, ſhall be liable to repair the perſons whoſe goods were taken, by action in the court of admiralty; and in caſe the commander's part of the ſhip, together with ſuch money and goods, ſhall not be ſufficient to repair all the damages ſuſtained, the reparations recovered on the maſter's part of the ſhip ſhall be divided *pro rata*, amongſt the perſons proſecuting and proving their damages, and the perſons damaged ſhall have their action againſt the maſter for the remainder. 22 and 23 *Car.* II. Cap. 11. S. 2. 13 and 14 *Car.* II. Cap. 11. S. 35.

No maſter of any ſuch *Engliſh* ſhip, being at ſea, and having diſcovered any ſhip to be a *Turkiſh* ſhip, pirate, or ſea rover, ſhall depart out of his ſhip. 13 and 14 *Car.* II. Cap. 11. S. 3.

If the maſter of any *Engliſh* ſhip, though not of the burthen of two hundred tons, or mounted with ſixteen guns, ſhall yield his ſhip unto any *Turkiſh* ſhip, pirate, or ſea rover, (not having at leaſt his double number of guns) without fighting, ſuch maſter ſhall be liable to the ſentence of this act. Ditto, S. 4.

Upon proceſs out of the court of admiralty, it ſhall be lawful for all commanders of his majeſty's ſhips, or the commanders of any other *Engliſh* ſhips, to ſeize ſuch ſhips or maſters ſo offending, according to the proceſs, and the ſame to ſend in cuſtody, into any ports of his majeſty's dominions, to be proceeded againſt according to this act. Ditto, S. 5.

Provided that none be hereby encouraged to violate the rights of the port of any foreign prince or ſtate in amity. Ditto, S. 6.

If the mariners or inferior officers of any *Engliſh* ſhip laden with goods ſhall decline or refuſe to fight, and defend the ſhip, when they ſhall be thereunto commanded by the maſter, or ſhall utter any words to diſcourage the other mariners from defending the ſhip, every mariner who ſhall be found guilty of declining, or refuſing, as aforeſaid, ſhall loſe all his wages due to him, together with ſuch goods as he hath in his ſhip, and ſuffer impriſonment, not exceeding ſix months; and ſhall during ſuch time be kept to hard labour for his maintenance. Ditto, S. 7.

Provided, that if any ſhip ſhall have been yielded, contrary to the will of the commander, by the diſobedience of the mariners, teſtified by their having laid violent hands on him, the maſter ſhall not be liable to the ſentence of incapacity, nor to any action for the loſſes ſuſtained by the merchants, unleſs he ſhall have received back, from the takers, his ſhip, or ſome reward. Ditto, S. 8.

Maſters may re-imburſe themſelves out of the wages of their mariners for loſſes happening by their negligence. As was adjudged in the caſe of *Lane* againſt *Sir Robert Cotton*. *Raymond* 650, *Eaſter Term*, 13 *Will.* III. Goods were ſtolen from on board the ſhip in the river.

Every mariner who ſhall have laid violent hands on his commander, to hinder him from fighting in defence of his ſhip and goods, ſhall ſuffer death as a felon. Ditto, S. 9.

When any *Engliſh* ſhip ſhall have been defended by fight, and brought to her port, in which fight any of the officers or ſeamen ſhall have been wounded, it ſhall be lawful for the judge of the admiralty, or his ſurrogate, or the judge of the vice-admiralty,

ralty, within which the ſhip ſhall arrive, upon petition of the maſter or ſeamen, to call unto him ſuch as he ſhall be informed to be adventurers, or owners of the ſhip and goods, and by advice with them to raiſe upon the owners and adventurers by proceſs of the court ſuch ſums of money, as himſelf with the major part of the adventurers or owners preſent, ſhall judge reaſonable, not exceeding two *per cent.* of the ſhip and goods, according to the firſt coſts of the goods by the invoice (which the owner or his factor is to produce) or by the oath of the owner, or his correſpondent; which money ſhall be paid to the regiſter of the court, who ſhall receive 3d. in each pound, thence to be diſtributed amongſt the captain, maſter, officers, and ſeamen of the ſaid ſhip, or widows and children of the ſlain, according to the direction of the judge, with the approbation of three or more of the owners or adventurers, who ſhall proportion the ſame unto the ſhip's company, having ſpecial regard unto the widows and children of ſuch as ſhall have been ſlain, and to ſuch as ſhall have been wounded or maimed. 13 and 14 *Car.* II. C. 11. S. 10.

In caſe the company belonging to any *Engliſh* merchant ſhip ſhall take any ſhip which ſhall firſt have aſſaulted them, the officers and mariners ſhall, after condemnation of ſuch ſhip and goods, have ſuch part thereof as is practiſed in private men of war. Ditto, S. 11.

If any captain, maſter, mariner, and other officer, belonging to any ſhip, ſhall wilfully caſt away, burn, or deſtroy the ſhip, or procure the ſame to be done, he ſhall ſuffer death as a felon. Ditto, S. 12.

This laſt Sect. *is the ſame* per 1 Ann. *St.* 2. *Cap.* 9. *and is ſomething enlarged* 11 Geo. I. *Cap.* 29. *Sect.* 5.

No commander of any ſhip, outward-bound, ſhall receive on board any gunpowder, either as merchandize or ſtore for the voyage (except for his majeſty's ſervice) before ſuch ſhip ſhall be over-againſt *Blackwall*; upon pain of forfeiting for every fifty pounds weight of gunpowder 5l. and in proportion for a leſſer quantity. 5 *Geo.* II. Cap. 20. S. 2.

The commander of every ſhip, coming into the *Thames*, ſhall put on ſhore all powder, either before the arrival of ſuch ſhip at *Blackwall*, or within twenty-four hours after his ſhip ſhall come to an anchor there, or at the place of her unloading; upon pain of forfeiting 5l. for every fifty pounds weight of gunpowder found on board, and in the like proportion for a leſs quantity; and if any gunpowder ſhall be found on board ſuch ſhip above *Blackwall*, after the time limited for unloading the ſame, the commander of every ſuch ſhip ſhall, for every fifty pounds weight of gunpowder, forfeit 5l. and in proportion for a leſſer quantity. Ditto, S. 3.

If any commander or other officer of any ſhip (except his majeſty's ſhips) ſhall, while ſuch ſhip be in the river of *Thames*, between *London-Bridge* and *Blackwall*, keep any gun ſhotted, or ſhall fire, or permit to be fired, any gun on board ſuch ſhip before ſun-riſing, or after ſun-ſetting, ſuch commander, or officer, ſhall, for every ſuch gun ſo kept ſhotted, forfeit 5s. and for every gun ſo fired 10s. And if any commander, or other officer of any ſhip, or any other perſon on board, ſhall, while ſuch ſhips ſhall be in the river, between *London-Bridge* and *Blackwall*, permit to be heated, or melted on board ſuch ſhip any pitch, tar, roſin, or other combuſtible matter, every perſon ſo offending ſhall forfeit 5l. Ditto, S. 4.

It ſhall be lawful for the maſters, wardens, and aſſiſtants of the *Trinity-Houſe*, by inſtrument under their common ſeal, to authoriſe an elder-brother to go in a boat between ſun-riſing and ſun-ſetting to any ſhip, and go on board the ſame (his majeſty's ſhips always excepted), in order to ſearch for powder, guns ſhotted, and the heating and melting combuſtible matters, within the limits wherein ſuch offences are prohibited; and, if the commander or other officer in ſuch ſhip ſhall, upon demand, refuſe to permit any perſon ſo authoriſed to come on board ſuch ſhip, and make due ſearch, every ſuch commander, or officer, ſhall forfeit 5l. Ditto, S. 5.

No perſon ſhall caſt out of any ſhip or veſſel, within any haven, road, channel or river, flowing to any port or town within the king's dominions, any ballaſt, rubbiſh, gravel, or other wreck or filth; but only upon the land above the full ſea-mark, upon pain to forfeit 5l. 24 and 35 *Henry* VIII. C. 9. Sect. 6.

In

In caſe any ſhip ſhould be laid up or moored in *St. Saviour's Dock* (except ſuch ſhips as ſhall be loading, or delivering their cargoes, and except ſuch ſhips, not exceeding two at one time, as ſhould lie at *Ship-Wright-Yard* at the North-weſt corner of the dock, during the time ſuch ſhips ſhall be repairing) the maſter of every ſuch ſhip ſhall forfeit for every day ſuch ſhip ſhall ſo continue to be laid up and moored, 20s. 5 *Geo.* II. C. 20. S. 19.

Every perſon herein mentioned ſhall be exempted from being impreſſed into his majeſty's ſervice; that is to ſay, every perſon being of the age of fifty-five years, or under eighteen years, and every foreigner, whether ſeaman or landman, who ſhall ſerve in any merchant ſhip or privateer belonging to the ſubjects of *Great-Britain.* 13 *Geo.* II. P. 395.

Every perſon of what age ſoever, who ſhall uſe the ſea, ſhall be exempted from being impreſſed for the ſpace of two years, to be computed from his firſt going to ſea; and every perſon who having uſed the ſea ſhall bind himſelf apprentice to ſerve at ſea, ſhall be exempted for the ſpace of three years, to be computed from the time of binding. Ditto, p. 396.

Subſtance of the Act of the 20th of George II. *eſtabliſhing the Corporate Company for the Relief and Support of ſick, maimed, and diſabled Seamen; and of the Widows and Children of ſuch as ſhall be killed, ſlain, or drowned in the* MERCHANTS' SERVICE.

THE preamble to this act obſerves, that by one made in the 7 and 8 *Will.* III. certain encouragements were given to ſeamen to regiſter themſelves for his majeſty's ſervice; and if any ſuch ſhould, by age or other accidents, be diſabled for future ſervice, and ſhould not be able to maintain themſelves comfortably, and the children of ſuch diſabled ſeamen and the widows and children of ſuch of them as ſhould be killed or drowned in the ſea ſervice, were to be provided for in the royal hoſpital of *Greenwich*, ſo far as the ſaid hoſpital ſhould be capable to receive them, and the revenue thereof would extend; and for the better ſupport of the ſaid hoſpital, 6d *per* month is by the ſaid act to be allowed out of the wages of every ſeaman in the merchants' ſervice, as well as in the navy; and that ſo much of the ſaid act as relates to the regiſtering of ſeamen was repealed by an act of 9 *Ann.* whereby every ſeaman in the navy (though not regiſtered) is intitled to the benefits of the ſaid hoſpital; and that by an act of 10 *Ann.* any ſeaman is to be conſidered as fully qualified for an admiſſion into the ſaid hoſpital, who ſhall produce a certificate of his having been hurt or diſabled for ſea ſervice, in defending any ſhips of the ſubjects of this kingdom againſt an enemy, or in taking any ſhip from an enemy: And that by an act of the 8 *Geo.* I. every ſeaman on board a merchant ſhip, who ſhall be maimed in fight againſt any pirate, is to be admitted into the ſaid hoſpital, preferable to any other ſeaman diſabled merely by age: And that by an act of the 8 *Geo.* II. ſeamen on board any merchant ſhip, who ſhall be maimed in fight againſt an enemy, ſhould be admitted into the ſaid hoſpital, in like manner as any other ſeaman, wounded or diſabled in his majeſty's ſervice: And whereas the ſaid hoſpital is not capable to receive, nor the income thereof ſufficient to provide for the ſeamen in the ſervice of the navy, intitled to the benefits thereof, ſo that the ſeamen in the merchants' ſervice, maimed and diſabled in fight and proper objects of charity have ſeldom or never been admitted into the ſame hoſpital; and as there is no proviſion made by either of the ſaid acts for ſuch ſeamen in the merchants' ſervice as are diſabled by accidental misfortunes, or for thoſe worn out by age, or for the widows or children of ſuch as ſhall be killed or drowned in the ſaid ſervice; and as the ſeamen in the ſaid ſervice are willing to allow 6d. *per* month out of their wages, to be applied for the relief of ſuch as ſhall be diſabled or worn out by age, and of the widows and children of thoſe killed in the ſaid ſervice; and as they have during the courſe of this war, manifeſted their courage, and deſerve all due encouragement; and the eſtabliſhing the ſaid charity will tend to the honour and good of the public: It is enacted, that *Alexander Hume, John Briſtow, John Bance*, Eſqrs. &c. and their ſucceſſors, to be elected in the manner hereafter

after appointed, ſhall be one body corporate and politic, by the name of *The preſident and governors for the relief and ſupport of ſick, maimed, or diſabled ſeamen, and of the widows and children of ſuch as ſhall be killed, ſlain, or drowned in the merchants' ſervice*; and that by the ſame name of *The preſident and governors*, they ſhall have perpetual ſucceſſion, and a common ſeal, with power to alter the ſame as often as they ſhall judge expedient; and by the ſame name may ſue and be ſued, plead and be impleaded, &c. in all courts of record, and places of judicature within this kingdom; and that they and their ſucceſſors may receive and enjoy, in truſt for the purpoſes of this act, all ſuch ſums of money as are granted, and ſhall be raiſed by virtue of this act, or ſhall be contributed or bequeathed by well diſpoſed perſons; and may at any time hereafter, without licence in mortmain, purchaſe or receive any lands, tenements, or hereditaments, or any eſtate or intereſt therein, ſo that the ſame be only for the ſcite of, or to be converted into an hoſpital, with offices and appurtenances neceſſary for the ſaid purpoſes. P. 835, 836, 837.

The preſident and governors ſhall provide, in the ſaid hoſpital, for the reception of ſeamen rendered incapable of ſervice, or ſhall allow them certain penſions, or otherwiſe as they ſhall think moſt for the advan ge of the ſaid charity; and ſhall alſo relieve the widows and children of ſuch ſeamen as ſhall be killed or drowned in the ſaid ſervice, provided ſuch children are not of the age of fourteen, or if of that age or upwards, they are incapable of getting a livelihood, by reaſon of lameneſs, blindneſs, or other infirmities, and are proper objects of charity; and ſhall make reaſonable allowances to thoſe who ſhall loſe an eye or limb, or be otherwiſe hurt in fighting, defending, or working the ſhips in which they ſerve, or in loading or unloading the cargoes, or otherwiſe howſoever in doing their duty, in proportion to the damage they ſhall receive, ſo far as the revenues will extend for the ſaid purpoſes, according to ſuch rules, orders, and regulations as ſhall be eſtabliſhed in purſuance of this act. P. 839.

No ſeaman in the ſaid ſervice ſhall be intitled to any of the benefits of this act, unleſs he ſhall produce a certificate of the hurt, &c. received, to the preſident, aſſiſtants, and committees, herein after named, from the maſter, mate, boatſwain, and ſurgeon, or ſo many of them as were in the veſſel to which he belonged at the time of receiving ſuch hurt; or of the maſter, and two of the ſeamen if there is no other officer; or in caſe of the death of the maſter, then of the perſon who ſhall take upon him the care of the veſſel, and two of the ſeamen on board, under their hands and ſeals, ſignifying how and in what manner he received ſuch hurt, where and when he entered, and how long he had ſerved on board; and the parties giving ſuch certificates ſhall make oath of the truth of the contents before ſome juſtice, if given in any of his majeſty's dominions, or the chief officer of the cuſtoms of the place where there is no juſtice, or before the *Britiſh* conſul, or reſident, in any foreign country where ſuch certificate is executed (who are to adminiſter the ſame without fee;) and in caſe of ſickneſs whereby ſuch ſeaman ſhall be rendered incapable of ſervice, a certificate in like manner, ſignifying that he was healthy when he entered on board, and that the ſame was contracted in doing his duty in the ſervice of the ſhip, and not otherwiſe; and no widow or children of any ſeaman, killed or drowned in the ſaid ſervice, ſhall be intitled to any allowance by virtue of this act, unleſs they ſhall produce a certificate, authenticated in like manner, ſignifying how ſuch ſeaman loſt his life in the ſervice of the ſaid ſhip, the time and place he entered on board, and how long he had ſerved therein; and alſo another certificate under the hands and ſeals of the miniſter, and church-wardens and overſeers of the poor of the pariſh or townſhip, or any two of them, or of the miniſter and overſeers of the poor where there are no church-wardens, (and if ſuch widows or children are quakers, then under the hands of two reputable perſons of that perſuaſion) of the place where ſuch widow or children have a legal ſettlement, or reſide, to be atteſted by two or more credible witneſſes, that ſhe was the lawful wife, and they the children of ſuch ſeaman, and under the age of fourteen; or, if of that age or upwards, not capable of getting a livelihood, by reaſon of lameneſs, blindneſs, or other infirmities, and are proper objects of charity; and no ſeaman ſhall be provided for by a penſion, or otherwiſe, as decrepid or worn out, unleſs he ſhall have ſerved five years in the merchants' ſervice, and paid 6d. *per* month out of his wages for that time, for the purpoſes of this act. P. 840, 841.

If

If any perſon ſhall forge, counterfeit, alter, or unfairly obtain any ſuch certificate, the ſame, upon diſcovery thereof, ſhall be null and void; and the perſon applying for relief ſhall be for ever incapable of receiving any benefit from this act, and ſhall be puniſhed as an incorrigible rogue.

For the more conſtant and ordinary management of the monies to be raiſed for the purpoſes aforeſaid, there ſhall be for ever hereafter, from time to time, a preſident and twenty-one aſſiſtants, and committees of the ſaid corporation.

The ſaid preſident and aſſiſtants (therein named) ſhall continue ſo to be till the 24th of *June*, 1748: On which day yearly, or within five days before or after (ten days notice being firſt given, in the *London Gazette*, of the day fixed by the general court of the ſaid preſident and governors) a new election of a preſident and twenty-one aſſiſtants ſhall be made for the year following, and taken by the ſaid preſident and governors then preſent. P. 842.

At all general courts of the preſident and governors, and at the ſeveral full courts of aſſiſtants, the preſident ſhall have a vote, and act as a member; and, in caſe of an equality of votes, ſhall have the caſting voice.

There ſhall be four general courts at leaſt held every year, viz. on the 24th of *June*, the 29th of *September*, the 25th of *December*, the 25th of *March*, or within five days before or after either of the ſaid days, of which ten days notice ſhall be given in the *London Gazette*; and the preſident and aſſiſtants may call a general court at any other time, as the affairs of the corporation ſhall require, or at the requeſt of thirteen members, ſignifying the ſame by writing under their hands, provided notice be given as aforeſaid of the time and place of meeting.

The preſident with five or more of the aſſiſtants ſhall make a full court of aſſiſtants or committees; and ſhall meet upon *Wedneſdays* weekly, in or near *London*, or at ſuch other time and place as they ſhall appoint; and ſuch court when aſſembled ſhall have power to apply the monies ariſing by this act for the relief of ſuch ſeamen, and their widows and children, as are before deſcribed and to lay out the ſurplus thereof, and any monies contributed by well diſpoſed perſons, in parliamentary ſecurities, or in the purchaſe of ſuch lands, &c. as are before allowed, and under their common ſeal to enter into any contracts for the purpoſes aforeſaid, for the better carrying on the ſaid charity; and to appoint and remove at pleaſure any officers and ſervants, or other perſons employed (except ſuch officers and perſons as are directed to be choſen at a general court of the corporation) and to appoint ſuch ſalaries, perquiſites, or other rewards for their ſervice, as they ſhall think proper; and to tranſact and determine all ſuch matters as ſhall appear to be neceſſary for affecting the purpoſes hereby intended. P. 843.

The management and accounts of the preſident and aſſiſtants ſhall be liable to ſuch audit and inſpection, allowance, diſallowance, and control of all or ſuch of the members, as by any bye-laws of the corporation ſhall be appointed. There ſhall be a receiver of the corporation, who ſhall be choſen by a majority of the preſident and governors in a general court as aforeſaid, who ſhall be allowed ſuch ſalary as they ſhall think proper, and be removed at pleaſure, and another perſon choſen in his room. P. 844.

If any vacancy ſhall happen by death or removal of any perſon choſen at a general court, it ſhall be filled up at a general court of the preſident and governors, after ten days notice given of ſuch election in the *London Gazette*.

For keeping up a competent number of members, and for perpetuating the ſucceſſion thereof, and for filling up the places of preſidents and aſſiſtants, the preſident and thirteen governors, preſent at a general court to be held as aforeſaid, ſhall elect other fit perſons to be members in the room of ſuch of the perſons above named, or to be from time to time elected members, who ſhall die, or refuſe to accept of or continue to be members.

The preſident and thirteen governors, aſſembled in a general court, may make and conſtitute ſuch bye-laws, &c. as ſhall ſeem neceſſary for the eſtabliſhing the ſaid corporation, and the officers, ſervants, and perſons employed by them; and for the applying the money, and providing for the perſons intitled to the benefit of this act; and for the auditing the accounts, and the controlling, allowing, or diſallowing the tranſactions of the ſaid preſident and aſſiſtants, and of the officers, ſervants, and perſons;

and

and for putting the ſaid laws in execution, and for revoking and altering the ſame at pleaſure; which bye-laws, &c. ſhall be duly obſerved, ſo as they be reaſonable, and not repugnant to the ſtatutes, cuſtoms, or laws of this kingdom or any of the expreſs regulations of this act. P. 845.

If the preſident ſhall at any time not attend, the courts of aſſiſtants, or governors at a general court, ſhall depute any other member to preſide and act as preſident in his abſence, and do all other acts and things at the ſaid courts as the preſident is impowered and required to do.

For the encouragement of benefactors to ſo good a deſign, it is enacted, That if any perſon ſhall, at one or more payments, contribute 50l. for the purpoſes of this act, he ſhall be declared a governor of the ſaid corporation.

Every ſeaman or perſon employed in any veſſel belonging to a ſubject of *England*, and every maſter or owner navigating the ſame (other than ſuch apprentices under the age of eighteen, as are exempted from payment of 6d. *per* month to the hoſpital at *Greenwich*, by an act of 2 *Anne*, and perſons employed on the coaſts of *England* in taking fiſh brought freſh on ſhore; and perſons employed in boats or veſſels that trade only from place to place within any river in *England*, or in open boats upon the coaſts thereof) and pilots employed on board veſſels, ſhall, after the 29th of *September*, 1747, pay 6d. *per* month, and proportionably for a leſſer time, during their employment, for the purpoſes aforeſaid. P. 846.

The maſter, owner, or commander of every veſſel is to deduct out of the wages, &c. of every ſuch ſeaman, &c. (except as before excepted) the ſaid duty of 6d. *per* month, and ſhall pay the ſame to ſuch receivers as the preſident and governors or the truſtees of the out-ports ſhall appoint, if ſuch ſeaman, &c. ſhall have, or be intitled to, wages, ſhares, or profits.

The preſident and governors, at a full court of aſſiſtants, ſhall appoint one or more receivers of the ſaid duty at the port of *London*; and alſo depute the collectors or other officers of his majeſty's cuſtoms in the ſeveral out-ports of *England*, or other perſons, to receive the ſame there (except in ſuch out-ports where ſeparate truſtees ſhall be appointed by virtue of this act) and the ſaid ſeveral receivers are required to collect and pay over the ſaid duty, according to the inſtructions in writing, which ſhall from time to time, be ſent them by the preſident and governors; for which allowances ſhall be made them out of the ſaid duties, as the preſident and governors ſhall think fit. P. 847.

Every maſter or other perſon navigating, or having the care of any merchant veſſel, ſhall keep a book by way of muſter-roll, in which ſhall be entered his own, and the names of the perſons employed on board, with the uſual place of their abode when on ſhore; and over againſt each name, the time and place of entering into ſuch ſervice, and in what ſhip he performed his laſt voyage; a duplicate whereof ſhall be ſigned by the ſaid maſter, or other perſon having the care of ſuch veſſel, and ſhall be delivered, before her departure, to the collector of the ſaid duties, at the port to which ſhe belongs; and the ſaid maſter, &c. ſhall keep ſuch a muſter-roll during the voyage, and ſhall enter when and where any perſon ſhall be diſcharged from, or ſhall leave or deſert ſuch veſſel, and others ſhipped on board, deſcribing them as before directed; and when and where any of them received any hurt or damage, or were killed or drowned: a duplicate whereof ſhall be ſigned and delivered as aforeſaid, at the ſhip's return to the port to which ſhe belongs; true copies whereof ſhall be made, and filed by the collectors, and the original duplicates tranſmitted by them to the preſident and governors to be filed and kept by ſuch officer as they ſhall appoint: And the ſaid maſters and receivers, &c. in default of any of the premiſes, ſhall ſeverally forfeit 20l. ſterling for every ſuch offence. P. 848.

For the better diſcovery of what ſhall be due from perſons ſerving on board merchant ſhips, &c. the collectors ſhall ſummon by warrant under their hands all ſuch maſters, &c. or (in their abſence) the owners of ſuch veſſels, to appear at their office (ſo as they be not obliged to travel above ten miles for the making ſuch appearance) and to examine them upon oath (which oath the ſaid collectors are to adminiſter) to the truth of the copy of ſuch muſter-roll, and the number and times of ſervice of each perſon chargeable with the ſaid duty; and upon their refuſal to appear, or make oath as aforeſaid, they ſhall be fined 20l. ſterling. P. 849.

For the more eaſy and effectual collecting the ſaid duty, from the maſters, &c. of merchant veſſels employed in the ſervice of his majeſty, the ſecretaries or chief clerks of the public offices of the crown, uſually hiring, &c. veſſels for that ſervice ſhall deliver a duplicate of the liſt of the numbers and names of ſuch ſhips, and of the maſters and owners thereof reſpectively, and of the ſeamen, &c. to the collectors of the ſaid duty at the port of *London*, or out-ports to which they ſeverally belong, as is by an act of 2 *Geo.* II. to be delivered to the collector of the port of *London*, of the duty of 6d. *per* month given to the royal hoſpital at *Greenwich*; and the ſaid ſecretaries and other officers belonging to the ſaid offices, and the maſters, &c. of ſuch veſſels, ſhall do every other act for the due payment of the duty, as is required to be done by the ſaid act of 2 *Geo.* II. for the payment of the duty of 6d. *per* month to the ſaid royal hoſpital, and ſhall be liable to the like penalties and forfeitures for any default herein. P. 850.

Every maſter, &c. liable to the payment of the ſaid duty, ſhall pay all ſuch monies as ſhall, from time to time, be due to the collectors appointed, at the port only to which ſuch veſſel does belong, and before ſuch veſſel ſhall be cleared inwards, by the officers of the cuſtoms in any of the ports of *England*; and no officer of the cuſtoms ſhall clear inwards any merchant ſhip liable to the ſaid duty, or grant any warrant, cocket, tranſire, return, or diſcharge, or ſuffer ſuch veſſel to go out of port, until the maſter, &c. ſhall produce a certificate from the receiver of the ſaid duty being fully paid, and that he is not more than three months in arrear for the ſame, or that he is exempted from the payment of the ſaid duty by virtue of the exceptions herein contained; and the perſons making default in any of the premiſſes, or acting contrary to the directions before-mentioned, ſhall forfeit 20l. ſterling for every ſuch offence. P. 851.

If the maſter, &c. ſhall not produce ſuch certificate to the tide-ſurveyor, when he ſhall come on board to clear ſuch veſſel, the tide-waiter ſhall be continued on board at the expence of ſuch maſter, owner, or commander, until ſuch certificate is produced.

In all caſes where an oath is required to be taken, the ſolemn affirmation of *Quakers* ſhall be accepted inſtead thereof; and if any *Quaker* ſhall refuſe to make ſuch affirmation, he ſhall be ſubject to the like forfeitures and penalties as any other perſon refuſing to take an oath is liable to by this act; and any perſon convicted of falſe affirming or ſwearing, before any collector, &c. hereby authorized to adminiſter oaths, he ſhall ſuffer penalties, &c. as perſons convicted of wilful and corrupt perjury are by the laws of *England* liable to. P. 852.

The charges and expences of obtaining this act ſhall be paid out of the firſt monies to be raiſed and contributed by virtue hereof at the port of *London*.

From and after the 24th of *June*, 1747, the owners and maſters of veſſels belonging to perſons reſiding at any of the out-ports of this kingdom, may meet within the limits of the ſaid ports at any proper time and place appointed by five or more of them, by giving ten days previous notice, to be fixed at the cuſtom-houſe, wharf, key, or other public place, at ſuch out-port; and may from time to time appoint by an inſtrument in writing under their hands and ſeals fifteen perſons to be truſtees for ſuch out-port, for receiving and applying the ſaid duty of 6d. *per* month, at ſuch out-port for the relief of the ſeamen employed on board the veſſels belonging to ſuch perſons reſpectively; and ſuch of their widows and children as ſhall be entitled thereto by this act; and the ſaid truſtees ſhall continue to the 26th of *December* next after ſuch election, and until new truſtees are nominated and confirmed, and within ten days after every 26th of *December* yearly, the ſaid owners and maſters ſhall meet and appoint in like manner fifteen perſons to be truſtees for the year enſuing, and the ſaid truſtees ſhall continue until new ones are elected and confirmed; and the ſaid inſtrument ſhall be ſent to the preſident and aſſiſtants, who are to confirm the ſame under the common ſeal of the corporation, without fee or reward within ten days after the receipt thereof: and the ſaid truſtees, when ſo confirmed (five whereof ſhall be a *quorum*) ſhall be veſted with the ſame powers to make bye-laws, and to revoke or alter the ſame, and for receiving and applying benefactions, and for appointing receivers and other officers for collecting and applying the ſaid duty, as are given to the preſident and governors aforeſaid, according to ſuch rules, orders, and regulations as ſhall be eſtabliſhed in purſuance of this act; and the ſaid receivers and other officers ſhall have the ſame powers

as

as other the receivers and officers before appointed, and ſhall be liable to the ſame penalties and forfeitures. P. 853.

And whereas by letters patent, bearing date the 18th of *December*, in the ſixth year of the reign of king *Edward* VI. certain merchants therein named and their ſucceſſors, reſiding at the port and city of *Briſtol*, are incorporated by the name of *The maſter, wardens, and commonalty of merchant-venturers of the city of Briſtol*; which ſociety is willing, for the benefit of the ſeamen employed in the ſervice of the merchants, &c. belonging to the ſaid city and port, to undertake the collection and application of the ſaid 6d. *per* month, payable there, and of any donations of well diſpoſed people; it is therefore enacted, that the maſter wardens, aſſiſtants and treaſurer of the ſaid incorporated ſociety, for the time being, ſhall be truſtees, and ſhall be veſted with the like power, &c. for collecting, recovering, and applying, &c. the ſaid duty and any donations, at the ſaid city and port; and for appointing receivers and other officers for the ſaid purpoſes as are granted by this act to the preſident and governors aforeſaid, according to ſuch rules, orders, and regulations as are or ſhall be eſtabliſhed by virtue of this act; and ſuch receivers and other officers ſhall have the ſame powers, &c. as thoſe to be appointed in purſuance of this act, and ſhall be ſubject to the like penalties and forfeitures; and the ſaid maſter, wardens, aſſiſtants, and treaſurers, ſhall alſo have power to take and receive any lands, tenements, and hereditaments in ſuch manner, and for the like purpoſes only, as the ſaid preſident and governors are by this act impowered to take and receive. P. 854, 855.

And whereas the guild of maſters and pilots, ſeamen of the *Trinity Houſe* of *Kingſton* upon *Hull*, are willing for the benefit of the ſeamen employed in the ſervice of merchants, &c. belonging to the ſaid town and port, to undertake the collection and application of the ſaid duty, and any donations of well-diſpoſed people there, it is therefore enacted. That the ſaid guild of maſters and pilots, ſeamen of the *Trinity-houſe* of the town and port of *Kingſton* upon *Hull*, for the time being, ſhall be truſtees, and ſhall be veſted with the like powers for collecting, recovering, and applying, &c. the ſaid duty and any donations, and for appointing receivers and other officers, as are granted by this act to the preſident and governors aforeſaid, according to ſuch rules, orders, and regulations as are or ſhall be eſtabliſhed by virtue of this act; and ſuch receivers, and other officers ſhall have the ſame powers, &c. as thoſe to be appointed in purſuance of this act; and ſhall be ſubject to the like penalties and forfeitures.

Nothing herein contained ſhall oblige the receivers or collectors of the ſaid duty, who ſhall be appointed by the truſtees of any of the reſpective out-ports, to ſend duplicates of the muſter rolls (directed to be delivered to them by the maſter or perſon having care of any veſſel) to the ſaid preſident and aſſiſtants; but ſuch duplicates, after making and filing copies thereof, ſhall be delivered by ſuch collectors, &c. to the ſaid truſtees reſpectively, to be by them kept for their uſe. P. 856.

No ſeaman, &c. in the merchants' ſervice, ſhall be intitled to any benefit from this act at the port of *London*, or any out-port, but thoſe who are liable to, and ſhall pay the ſaid duty at the ſaid ports reſpectively.

Thoſe ſeamen who ſhall have been longeſt in the ſaid ſervice, and contributed moſt towards the ſaid duty, ſhall be firſt provided for as worn out or decrepit.

If any ſeaman or other perſon employed on board any veſſel ſhall, in the diſcharge of his duty, either on ſhore or on board, break any limb, or be otherwiſe hurt, ſo that immediate care is neceſſary to be taken of him, the preſident and governors of the port of *London*, and the reſpective truſtees for the out-ports, ſhall provide proper relief for ſuch perſon, until he ſhall be ſo well recovered of ſuch hurt as to be removed and ſent with ſafety to the port to which ſuch veſſel does belong; and the expence thereof, not exceeding 2d. per mile, ſhall be paid by the preſident and governors at the port of *London*, or by the truſtees for the out-port to which ſuch perſon ſhall be ſent. P. 857.

If any ſeaman or other perſon ſhall ſerve five years or more in the merchant ſervice, and ſhall have paid the 6d. per month for that time, and ſhall be adjudged by the preſident and aſſiſtants, or the reſpective truſtees, a proper object of relief, he ſhall be provided for at the port where he ſhall have paid the greateſt part of the ſaid duty for the laſt five years of his ſervice.

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If it ſhall happen that ſeamen employed in the merchant ſervice, within the limits of this act, ſhall be ſhipwrecked or taken by the enemy, and on their return from impriſonment may be travelling with paſſes to the place of their abode, the preſident and governors, and the reſpective truſtees may relieve them in ſuch manner as they ſhall think proper.

Where certificates directed to be produced by this act cannot be obtained, ſuch other certificates as ſhall be ſatisfactory to the preſident and governors, or truſtees reſpectively, ſhall be admitted to intitle the party to the penſions or other relief provided by this act.

And whereas the united company of merchants of *England*, trading to the *Eaſt-Indies* have at their own expence provided for ſuch ſeamen employed by them, as have been rendered incapable of ſervice, and for the widows and children of ſuch as have been killed or drowned in their ſervice, and have eſtabliſhed a fund for that purpoſe, and are therefore deſirous, that the perſons employed in the ſaid ſervice may be exempted from the payment of the ſaid 6d. *per* month; it is therefore enacted, that no officer, ſeamen, &c. of any veſſel employed in the ſervice of the ſaid company, ſhall, during the time of ſuch ſervice, be liable to the payment of the ſaid duty. P. 858.

No officer, or ſeaman, &c. during his employment in the ſervice of the ſaid company, nor the widows or children of ſuch of them as ſhall be killed or drowned, ſhall be intitled to any benefit of this act during the time they ſhall be employed in the ſaid ſervice.

All pecuniary forfeitures and penalties incurred by virtue of this act ſhall be ſued for and recovered in any court of record in *England*, wherein no eſſoin, protection, privilege, wager of law, or more than one imparlance ſhall be allowed; and if a verdict ſhall paſs for the plaintiff in any ſuch action he ſhall be allowed double coſts; and one moiety of the forfeitures, &c. ſhall be applied to the uſes of this act, and the other to the perſon who will ſue for the ſame in manner aforeſaid. P. 859.

This act ſhall be deemed a public act, and be judicially taken notice of as ſuch by all the judges and other perſons, without ſpecially pleading the ſame; and all actions or ſuits which ſhall be commenced againſt any perſon for any thing done in purſuance of this act, or in relation to the premiſſes, ſhall be brought within three months next after the fact committed; and ſhall be laid in the county or place where the fact was done, and not elſewhere; and the defendant may plead the general iſſue, and give this act and the ſpecial matter in evidence, and that the ſame was done in purſuance thereof; and if it ſhall ſo appear, or if ſuch action, &c. ſhall be brought after the time limited, or in any other county or place, the jury ſhall find for the defendant; or if the plaintiff ſhall become nonſuited, or ſuffer a diſcontinuance of his action, or verdict ſhall paſs againſt him, the defendant ſhall have double coſts; and ſhall have ſuch remedy for the ſame as defendants have for coſts of ſuit in any other caſes by law.

The procuring the preceding *act* is an inſtance of the benevolent regard our merchants have for the future ſupport at home of thoſe ſeamen who ſhall ſuffer by valiantly defending their property, either in ſhip or goods, and for the diſtreſſed families of ſuch, who ſhall unhappily loſe their lives in their ſervice; while the following *acts* ſerve no leſs to demonſtrate both theirs, and the government's indulgent attention to ſecure a ſufficiency for them abroad, when reduced by misfortunes to the neceſſity of claiming it; and the charitable diſpoſitions they contain, plainly evince as well the prudence as the beneficence of the promoters and compilers of them, juſtly challenging our tribute of praiſe for ſuch ſhining inſtances of tenderneſs and compaſſion, in a comfortable proviſion for the accidental ſufferings of the brave, till then left deſtitute and diſregarded. I mean, by law, for though the 22d and 23d *Car.* II. Cap. 11. Sect. 10. (before recited) provides ſomething for the maimed and ſlain, yet it is too ſmall to ſupply the loſs of limbs, or give maintenance to the afflicted relicts of a ſailor, untimely ſnatched away; 'tis therefore from theſe ſtatutes only the mariner muſt expect redreſs, and a reflection on their exiſtence will naturally encourage him to deſerve their protection by a punctual compliance with his duty.

An act for making perpetual an act for the better regulation and government of ſeamen in the merchant ſervice, and for extending the proviſions thereof to his majeſty's colonies in *America*, was made in the firſt year of his preſent majeſty. It is thereby enacted,

enacted, That from and after the firſt of May 1764, all the proviſions, penalties, matters, and things, in the act of the 2d of *Geo.* II. be extended to his majeſty's dominions in *America*; and the forfeitures applicable to *Greenwich hoſpital* to be paid there, to the officer conſtituted by the admiralty; and maſters of ſhips deducting any of the ſaid forfeitures out of the ſeamens wages, and not duly paying over the ſame, forfeit treble the value to the ſaid *hoſpital.*

It ſhall be lawful for perſons authoriſed by the majority of the *Britiſh* merchants and factors reſiding in *Portugal*, being aſſembled with the conſul general, or his deputy, in any of the ports of *Portugal*, to recover from all commanders of *Britiſh* ſhips trading from *Great-Britain* or *Ireland*, or any other his majeſty's dominions, to any of the dominions of the king of *Portugal*, the following ſums, viz. any ſum not exceeding 200 *reis per* ton on all tonnage goods (except wheat, barley, rye, coals, timber, boards, and lumber) and 100 *reis per* ton on wheat, barley, &c. and 15 *per cent.* on the freight of all other goods exported from any of the king's dominions to any place in the dominions of the king of *Portugal*; and all bills of lading ſhall ſpecify to pay the monies accordingly, under denomination of contribution, as *per* act of parliament; and the perſons paying the ſame ſhall be reimburſed by the freighters, or the perſons to whom the goods ſhall be conſigned; and if no bill of lading ſhall appear, and no freight or tonnage is ſettled between the owner of the goods and the maſter of the veſſel, the freight or tonnage ſhall be valued by two different *Britiſh* merchants on the place, one to be choſen by the conſul general, and the other by the maſter of the ſhip, within ten days after unlading the goods; and if the perſons ſo choſen ſhall not agree to the ſame in five days, ſuch two perſons ſhall chuſe a third (being a *Britiſh* merchant on the place), who ſhall decide the valuation in three days. 8 *Geo.* I. Cap. 17. S 1.

All maſters of ſhips, trading from *Great-Britain, Ireland*, or any other his majeſty's dominions to the dominions of the king of *Portugal*, and unloading there, ſhall within ten days after their arrival deliver to the conſul general, or deputy conſul, reſiding there, or to ſuch perſon as ſhall be appointed, a manifeſt upon oath, ſpecifying the particulars of the cargo, or of ſuch part thereof as ſhall be unloaded there, and to whom conſigned, which oath the conſul general, &c. is to adminiſter *gratis.* S. 2.

The conſul general, or his deputy ſhall detain the clearances outwards of all *Britiſh* and *Iriſh* ſhips till payment. S. 3.

The monies ſhall be applied in manner following, viz. to the miniſter reſiding there 300 *mill-reis per annum*, by equal quarterly payments, and the remainder for the relief of ſhip-wreck'd mariners, and other diſtreſſed perſons, his majeſty's ſubjects, and to ſuch other charitable and public uſes as ſhall be appointed by the majority of the *Britiſh* merchants and factors reſiding at *Liſbon*, and other ports in *Portugal*, being aſſembled with the conſul general, or any of his deputy conſuls. S. 4.

Perſons formerly liable to pay the four *reis per mill*, ſhall, after payment of the ſums required by this act, be exempted from the ſame. S. 5.

The conſul general, or his deputy conſuls, reſiding in *Portugal*, ſhall, as they ſee occaſion, call a general meeting of the *Britiſh* merchants and factors, and ſhall cauſe ſuch meetings as often as ſhall be deſired, by writing under the hands of any five *Britiſh* merchants or factors. S. 6.

This ſhall be a public act, &c. Sect. 7.

An act like the preceding was made for his majeſty's ſubjects trading to *Cadiz* and *Port St. Mary's*, ſpecifying that any ſums of money not exceeding one ryal plate *per* ducat, ſhall be received from all maſters of *Britiſh* and *Iriſh* veſſels, trading to thoſe places, on the freight of goods (except tonnage goods) imported into the ſaid ports, and on all tonnage goods, any ſums not exceeding two ryals plate *per* ton, to be collected and diſpoſed of in the ſame manner as directed for that raiſed in *Portugal*, and the other part of this act being *verbatim* like that, is here omitted to be repeated. 9 *Geo.* II. C. 25. S. 1, 2, 3, 4, 5, 6.

It ſhall be lawful for perſons appointed by the conſul, named for his majeſty's ſubjects trading to the port of *Leghorn*, together with the majority of the *Britiſh* merchants and factors there, to recover from all commanders of *Britiſh* or *Iriſh* ſhips, trading from any part of his majeſty's dominions to the ſaid port, any ſums not exceeding one *livre per ton* on all tonnage goods imported into the ſaid port, and all bale goods, not exceeding

ing one-third of a *livre per* bale, or parcel: *to be recovered and applied with like directions as in* 9 Geo. II. Cap. 25, *for the conſulage duty at* Cadiz *and* Port St. Mary's. 10 *Geo.* II. C. 14. S. 1.

Mariners muſt help one another both at ſea and in port, and never quit the ſhip without leave from the maſter, when ſhe is at anchor. *Leg. Oleron.* Cap. 13, *& per Leg. Denmarc.*

If mariners get drunk and wound one another, they are not to be cured at the charge of the maſter or ſhip, as the damage is not received in the ſervice of either; but if any of them are hurt, or taken ill, in doing their duty, the expence of their cure the ſhip muſt defray; and if his diſorders render him unfit to continue on board, he ſhall be left on ſhore, and have thoſe accommodations and aſſiſtance his caſe requires; and though the ſhip muſt not be detained to attend his recovery, yet, if this happens afterwards, he ſhall have his full wages, deducting only what the maſter may have expended for him. *Leg. Oleron.* Cap. 1 and 6.

If goods are thrown overboard in order to lighten, and by this means ſave the ſhip in a ſtorm, upon proof thereof, by the oaths of the maſter, &c. he ſhall be acquitted, though the ſhip, freight, and remainder of the cargo ſhall be brought into an average, to make good what was ſo thrown away for the preſervation of the whole. *Leg. Oleron.* Cap. 11.

Though a ſhip ſhall be ſeized for debt, or otherwiſe become forfeited, the mariners muſt receive their wages, unleſs in ſome caſes, where they are forfeited as well as the ſhip, as in caſe of committing piracy, with letters of marque, by reaſon of which all will be forfeited; but lading of prohibited goods on board, ſuch as wool, &c. though it ſubjects the ſhip to a forfeiture, yet it diſables not the mariner of his wages; for the ſailors having honeſtly performed their parts, the ſhip is tacitly obliged for their wages; but, if the ſhip periſhes at ſea, they loſe their wages, and the owners their freight: And this being the marine cuſtom is allowed as well by the *common* as *civil law.* Conſolat. del. *Merc.* *Roll's* Abridg. Fol. 530.

Barretry of the mariners is a diſeaſe ſo epidemical, that it is difficult for a maſter with the greateſt care to prevent it, and though he may not really be faulty yet the law will always adjudge him ſo, and impute ſailors *offences* to his *negligence*; and were it otherwiſe, the merchant would be in a very dangerous condition; and the reaſons why a maſter ſhould be reſponſible for his crew are, becauſe it is of his own chuſing, and under his correction and government, and on ſhip-board know no other ſuperior but himſelf, and if they are faulty he may correct and puniſh them (in a moderate manner) and juſtify the ſame by law; and the fact being proved againſt them, he may re-imburſe himſelf out of their wages. Juſt. de ob. juræ exdilect. ſ. *Fin. Paſch.* 11 *Jac.* in B. R. *Herne.* verſ. *Smith.* *Roll's* Abridg. 533.

This act explains and amends an act of 7 *Geo.* II. Cap. 15. intituled, *An act to ſettle how far owners of ſhips ſhall be anſwerable for the acts of the maſters or mariners.* 26 *Geo.* III. Cap. 86.

From and after *September* 1, 1786, no perſon or perſons, who is, are, or ſhall be owner or owners of any ſhip or veſſel, ſhall be ſubject or liable to anſwer for or make good, to any one or more perſon or perſons, any loſs or damage, by reaſon of any robbery, embezzlement, ſecreting, or making away with, of any gold, ſilver, diamonds, jewels, precious ſtones, or other goods or merchandiſe, which ſhall, from and after that day, be ſhipped, taken in, or put on board any ſhip or veſſel, or for any act, matter or thing, damage or forfeiture; done, occaſioned, or incurred, from and after the paſſing this act, without the privity and knowledge of ſuch owner or owners; further than the value of the ſhip or veſſel, with all her appurtenances and the full amount of the freight due, or to grow due, for and during the voyage wherein ſuch robbery, embezzlement, ſecreting, or making away with as aforeſaid, ſhall be made, committed, or done, although the maſter or mariners, ſhall not be in anywiſe concerned in or privy to ſuch robbery, embezzlement, ſecreting, or making away with; any law, cuſtom, or uſage, to the contrary thereof in any wiſe notwithſtanding. Sect. 1.

No owner or owners of any ſhip or veſſel ſhall be ſubject or liable to anſwer for or make good, to any one or more perſon or perſons, any loſs or damage which may happen

happen to any goods or merchandiſe whatever; which from and after *September* 1, 1786, ſhall be ſhipped, taken in, or put on board any ſuch ſhip or veſſel; by reaſon or means of any fire happening to or on board the ſaid ſhip or veſſel. 26 *Geo.* III. C. 86. S. 2.

No maſter, owner or owners of any ſhip or veſſel, ſhall be ſubject or liable to anſwer for, or make good, to any one or more perſon or perſons, any loſs or damage which may happen to any gold, ſilver, diamonds, watches, jewels, or precious ſtones, which from and after the paſſing this act, ſhall be ſhipped, taken in, or put on board any ſuch ſhip or veſſel; by reaſon or means of any robbery, embezzlement, making away with, or ſecreting thereof, unleſs the owner or ſhipper thereof ſhall, at the time of ſhipping the ſame, inſert in his bill of lading, or otherwiſe declare in writing to the maſter, owner or owners of ſuch ſhip or veſſel, the true nature, quality, and value of ſuch gold, ſilver, diamonds, watches, jewels, or precious ſtones. Sect. 3.

Enacts that if ſeveral freighters or proprietors of any ſuch gold, ſilver, diamonds, jewels, or precious ſtones, or other goods or merchandiſe, ſhall ſuffer any loſs or damage, by any of the means aforeſaid, in the ſame voyage (fire only excepted) and the value of the ſhip or veſſel with all her appurtenances, and the amount of the freight due, or to grow due during ſuch voyage, ſhall not be ſufficient to make full compenſation to all and every one of them, then ſuch freighters or proprietors ſhall receive their ſatisfactions thereout in average, in proportion to their reſpective loſſes or damages; and in every ſuch caſe, it ſhall and may be lawful to and for ſuch freighters or proprietors, or any of them, on behalf of himſelf and all other ſuch freighters and proprietors, or to and for the owners of ſuch ſhip or veſſel, or any of them, or on behalf of himſelf and all the other part owners of ſuch ſhip or veſſel, to exhibit a bill in any court of equity for a diſcovery of the total amount of ſuch loſſes or damages, and alſo of the value of ſuch ſhip or veſſel, appurtenances and freight, and for an equal diſtribution and payment thereof amongſt ſuch freighters and proprietors, in proportion to their reſpective loſſes or damages, according to the rules of equity; provided always, that if any ſuch bill ſhall be exhibited, by or on the behalf of the part-owners of ſuch ſhip, the plaintiff or plaintiffs ſhall annex an affidavit to ſuch bill or bills, that he, or they do not collue with any of the defendants thereto; and ſhall thereby offer to pay the value of ſuch ſhip or veſſel, appurtenances, and freight, as ſuch court ſhall direct; and ſuch court ſhall thereupon take ſuch method for aſcertaining ſuch value, as to them ſhall ſeem juſt, and ſhall direct the payment thereof, in like manner as is now uſed and practiſed in caſes of bills of interpleader. Sect. 4.

Provided always, that nothing in this preſent act contained ſhall extend, or be conſtrued to extend, to impeach, leſſen, or diſcharge any remedy, which any perſon or perſons now hath or ſhall or may hereafter have, againſt all, every, or any the maſters and mariners of ſuch ſhip or veſſel, for or in reſpect of any embezzelment, ſecreting or making away with any gold, ſilver, diamonds, jewels, precious ſtones, or merchandiſe, ſhipped or loaded on board ſuch ſhip or veſſel, or on account of any fraud, abuſe, or malverſation of and in ſuch maſters and mariners reſpectively; but that it ſhall and may be lawful to, and for every perſon or perſons ſo injured or damaged, to purſue and take ſuch remedy for the ſame, againſt the ſaid maſter and mariners reſpectively, as he or they might have done before the making of this act. Sect. 5.

When goods are once delivered to a maſter, they are not ſubject to be attached in his hands, nor can any cuſtom whatſoever ſupport the ſame, for they are in law as it were bailed to the ſhip, until the freight and all other charges are paid: And it is very much doubted whether an attachment can be made in *London* of any goods lying on board ſhip, in the river of *Thames* (though the port of *London*) notwithſtanding freight, and all other charges are paid off. *Mich.* 27 *Car.* II. *per* L. C. J. *Hale.*

Commiſſioners of bankruptcy iſſued a warrant to ſeize goods of a bankrupt on board two ſhips in *Topſham Bay* in *Devonſhire*; the goods were conſigned to perſons in *Holland*, who had not paid the bankrupt for them; the maſters refuſed to deliver the goods notwithſtanding the warrant, which occaſioned the commiſſioners coming to demand them, though they were ſtill refuſed. *Hill.* 8 *Ann.* in Chancery.

Sir *Peter King* moved for an order upon the maſters for their contempt.

The

The court at firſt greatly doubted, whether they could make an order in aid and aſſiſtance of the warrant of the commiſſioner of bankruptcy, the ſtatute having veſted a large power in them; beſides, the perſons, to whom the goods were conſigned, would be indebted to the creditors of the bankrupt, which creditors may recover by the law of *Holland*.

Sir *Peter King*. We ſhall rather loſe the goods than follow them into *Holland*.

Lord Chancellor. Their refuſing to deliver the goods upon warrant is no contempt of this court, though the commiſſioners act under a commiſſion under the broad ſeal: The maſters in this preſent caſe have ſome colour to detain the goods, for upon a delivery of them, they may be diſappointed of freight; and the aſſignees of the commiſſion muſt ſtand in the ſame place as the bankrupt, and be ſubject to his contract.

But, however, an order was made upon the maſters to deliver the goods upon payment of the freight, and the maſters to be indemniſied by the creditors againſt a bill of lading, which was ſent by the conſignees.

I have now finiſhed the ſubject of *Ships* and *Seamen*, which has been ſpun out to a great length by the neceſſary quotations of the caſes and laws ſo intereſting a topick calls for; and I think the omitting of any of them would have rendered the diſcourſe defective. I ſhall now according to my propoſed method, proceed to treat of other marine affairs; ſuch as

Freight, Charterparties, Bills of Lading, Demorage, and *Bottomry.*

FREIGHT is the ſum agreed on for hire of a ſhip, entirely or in part, for the carriage of goods, from one port to another, or to many ports; and muſt be paid in preference to all other debts, for whoſe payment the goods ſtand engaged; but as thoſe are reſponſible to the ſhip for her hire, ſo is the ſhip to the owner of the goods, in caſe of damage or waſte, through any defect of the veſſel or ſailors.

CHARTERPARTY (*Charta Partita, i. e.* a deed or writing divided) is the ſame in the civil law with an indenture at the common law. The parties are either the owners of ſhips on the one part, and merchants on the other; or maſters of ſhips, inveſted by the owners with power to enter into charterparties, and merchants. It is neceſſary to ſtate this diſtinction becauſe the owners often charter a ſhip outwards, and leave it to the diſcretion of the maſter to procure the beſt back freight he can in the foreign port to which the cargo is conſigned. The charterparty ſettles the agreement, as the BILLS of LADING do the contents of the cargo, and binds the maſter to deliver them well conditioned at the place of diſcharge, according to the agreement; and for performance, the maſter or the owner obliges himſelf, ſhip, tackle, and furniture.

The taking a ſhip to freight is the hiring her of her maſter or owners, either in part or the whole, and either by the month for an *entire* voyage, or by the ton; and the *contract*, reduced into a writing, is commonly called a charterparty, executed between the freighter, and the perſon who lets the ſhip, and expreſſive of the different particulars agreed on, as aforeſaid.

The maſter or owners generally covenant to provide both a ſufficiency of tackle and mariners, and to fit the ſhip in every reſpect for performing the voyage agreed on; and the merchant, on his part, ſtipulates to comply with the payment, promiſed for freight, on delivery of his goods, and both oblige themſelves in penalties for non-compliance; the nature and form of which will be ſhewn in the ſubſequent copy of a *Charterparty*, and the conſequent ſecurity of a *Bill of Lading*, both which I have inſerted for my reader's government.

If there be a verbal agreement only, and *earneſt* given, and the ſame be broke off by the merchant, according to the *Rhodian* law, he loſes his *earneſt*; but, if the owners or maſter repent, they forfeit double. Per Leg. Nav. Rhod. Art. 19.

But by the *common law* of *England* the party damnified may bring his action on the caſe, and recover all damages on the agreement. *Cro. Car.* 383.

If, by the time appointed in the charterparty, the ſhip is not ready to take in, or the merchant (after the days of demorage commonly granted) not ready to load, the parties

parties are at liberty, and the ſuffering one hath his remedy againſt the other by action, to recompenſe the damage.

If part of the loading be on board, and ſome intervening misfortune prevents the merchant from ſhipping the whole in time, the maſter is at liberty to contract with another, and ſhall have freight by way of damage for the time that thoſe goods were on board after that limited; for ſuch agreements, being of a conditional nature, a precedent failure as to a complete loading will determine the ſame, unleſs afterwards *affirmed by conſent*; and though it be no prudence for every merchant or maſter to depart from the contract, on a non-compliance of articles, yet it is the higheſt juſtice that ſhips and maſters ſhould remain free; for otherwiſe, by the bare lading of a caſk or bale, they might be defeated of the opportunity of paſſage or ſeaſon of the year. Jure Mar. L. 2. Cap. 4. S. 3.

So, on the other hand, if the veſſel be not ready, the merchant may ſhip the remainder of his goods on board another and diſcharge the firſt, and recover damages againſt the maſter or owners for the reſt; this being grounded on the like reaſon as the former. *Cro. Car.* 383. 3 *Lev.* 283.

Charterparties have always by the *common law* had a genuine conſtruction as near as may be, and according to the intention and deſign, and not according to the literal ſenſe of traders, or thoſe that merchandize by ſea, yet they muſt be regularly pleaded; and therefore in an action of covenant or an indenture dated the 9th *Oct.* 38 *Eliz.* wherein was recited, *Whereas by indenture of charterparty* dated, *Sept.* 8, 38 *Eliz.* between the plaintiff and *Francis Cherry*, the plaintiff having hired of him a ſhip, for a voyage to *Dantzick*, upon taking the ſhip it was agreed between them, that the ſhip ſhould be laden with corn at *Dantzick*, and ſail from thence to *Leghorn:* Now by the ſaid indenture, in conſideration the plaintiff had agreed, that the defendant ſhould have the moiety of corn *quod tunc fuit* (what then was) or afterwards ſhould be laden in the ſhip during the ſaid voyage, the defendant covenanted to pay the moiety of the money for the ſaid corn, *quod tunc fuit*, or afterwards ſhould be laden, *&c.* and alledgeth *in facto* (in fact) that *Oct.* 9, 38 *Eliz.* the ſhip was laden with ſixty laſts of corn, and for not performance of this covenant the action was brought; the defendant pleaded, that the deed was ſealed and delivered *Oct.* 28, 38 *Eliz.* *& quod ad tunc vel poſtea* (and that at that time or afterwards) there was not any corn, laden there, and traverſeth the delivery *Oct.* 9, or at any time afterwards before the 28th *Oct.* 38 *Eliz.* and it was adjudged upon demurrer, that in regard the plaintiff declared upon a deed dated *Oct.* 9, 38 *Eliz.* it ſhall be intended to have its eſſence and delivery at that time, and no other; and if he ſhould confeſs it to be delivered at any other time, it would be a departure from his declaration, and the word *tunc* is referred to the delivery, and not to the date; and if it were delivered ten months after the date, he ſhould not have the benefit of the corn laden before the delivery: And therefore the defendant was adjudged not to be charged with paying for any corn before the delivery of the deed, the words of the deed being, that he ſhould pay for the corn then laden, &c. which *(then)* is referred to the time of the eſſence of the deed by the delivery, and not to the date. 2 *Cro.* 263. *Oſley v.* Sir *Baptiſt Hicks.*

Atkinſon contracted with *Buckle* for the carriage of an hundred quarters of barley, and promiſed to deliver unto him the hundred quarters of barley a-ſhipboard at *Barton* haven in the county of *York*, to carry them for him, and for the carriage thereof did promiſe to pay him ſo much; and *Buckle* promiſed to carry the ſame for him, and accordingly brought his ſhip to the ſaid haven, expecting there the delivery of the hundred quarters of barley; but *Atkinſon* came not to deliver the ſame to him, whereupon *Buckle* brought his action of the caſe upon the promiſe, and upon *non aſſumpſit* pleaded, had a verdict and judgment, which was affirmed upon a writ of error. 3 *Bulſt.* 152. 1 *Ro.* 312.

Covenant upon a charterparty between *Bolton* owner, and *Lee* and *Morgan* merchants, freighters of a ſhip, let by *Bolton*, on freight, for a voyage to *Guinea*, at 48l. *per menſem*; and there was a mutual covenant between the parties, *& quemlibit eorum modo ſequente* (and each of them in the following manner) and then divers covenants follow, concerning the ſhip's tackle and performance of the voyage; and then a covenant for the payment of the freight *(viz.)* when the ſhip arrived at *Guinea*, the freight then due, was, upon notice, to be paid in *England*; and when ſhe arrived in *England*, the reſidue,

from the time of the laſt payment, was to be paid. And ſaith that at ſuch a time the ſhip arrived, and that ſix months and ten days were then paſt, which came to ſo much, whereof notice was given; and that after ſuch a time the ſhip arrived in *England*, and that he freight for ſix months, from the time of the laſt payment, came to 287l. 4s. and that the defendant had not paid any of the ſums; upon which the defendant demurred, and took theſe exceptions to the declaration.

1. For this, that the action is brought againſt one of the defendants only, omitting the other, *ſed non alocatur* (but not allowed), the covenant being between them, *et quemlibet eorum*, (and each of them) is joint and ſeveral of every part. 1 Mod. Caſ. 154. *Salk.* 393, Pl. 2.

2. For that it appears upon computation, the plaintiff demanded more upon the firſt breach than is due, by 30s. and leſs than is due upon the ſecond by 16s. and though that the firſt may be cured by the jurors finding leſs, or by the plaintiff's releaſing the overplus, yet where he demands leſs than is due, it is incurable; and cited ſeveral books there quoted for that purpoſe *in aſſumpſit*, where, as in this caſe, only damages are to be recovered; and on the other part was cited, *Cro. Jac.* 498. *Pemberton* v. *Shelton*, and 529, *Parker* v. *Curſon & Uxor.* See 2 *Levinz* 4. *Hulme & Sambers*; and 2 *Vent.* 129. *Welby* and *Philips*. *Hale* C. J. took a difference between this caſe of covenant and debt, and held, that after verdict it had been cured without queſtion; but upon demurrer there may be ſome doubt, the demurrer being general; but had the demurrer been ſpecial, it had been ill, and ruled judgment, *pro Quer.* 2 *Levinz* 56, and 3 *Keble* 39 and 50, *Bolton* and *Lee*.

If goods are fully laden on board, and the ſhip hath *broke ground*, and the merchant on conſideration determine again to unload them, and not proſecute the adventure, by the *marine law* the freight is due. Ad. *Leg. Rhod.*

And if the ſhip in her voyage becomes unable, without the maſter's fault, or that the maſter or ſhip be arreſted by any foreign prince, or ſtate, in her voyage, the maſter may either *mend his ſhip, or freight another*; but if the merchant will not conſent thereto, then the *freight* becomes due, for ſo much as the ſhip hath *earned*; otherwiſe the maſter is liable for all damages that ſhall happen: And therefore if that ſhip to which the goods were tranſlated periſhed, the maſter ſhall anſwer; but if both the ſhips periſh, then he is diſcharged: But in caſe of extreme neceſſity, as that the ſhip would be in a ſinking condition, and an empty ſhip is paſſing by, or at hand, he may tranſlate the goods; and if that ſhip ſinks or periſhes, he is there excuſed; but then it muſt be apparent that the ſhip ſeemed *probable* and *ſufficient*. *Leg. Oleron. Jud. ult. ad Rhod.* Digeſt. *Paulus*, L. 14. C. 2. S. 10.

If a maſter ſhall weigh anchor, and ſail after the time covenanted or agreed for his departure, if any damage happens at ſea after that time, he ſhall refund and make good all ſuch misfortune; yet if a *charterparty* is made, that the plaintiff ſhall ſail from *London* to *Liſbon*, with the firſt wind and opportunity, &c. in conſideration of which the merchant did covenant to pay ſo much for freight; the ſhip departs not with the firſt wind and opportunity, yet afterwards *breaks ground*, and arrives at her port, the freight in this caſe is become due; for there is nothing can bar the ſhip of her freight, but the not departure, for only that in law is traverſable, being material to avoid the payment of the freight; but to ſay the ſhip did not depart with the next wind, is but a circumſtance, which, in ſtrictneſs of law is not traverſable. *Popham* 161. *Palm.* 398. *Latch* 12, 49.

If it be agreed, that the maſter ſhall ſail from *London* to *Leghorn* in two months, and freight accordingly is agreed on, if he begins the voyage within the two months, though he does not arrive at *Leghorn* within the time, yet the freight is become due.

The *Eaſt-India* company might by charterparty keep a ſhip they had freighted a long time in *India*, and did ſo keep her until ſhe was unfit for ſervice, and could not come home; they were obliged in *Chancery* to pay the damage, though by the charterparty it was payable at the return of the ſhip. 2 *Vern.* 210.

So where no freight was to be paid for the cargo *outwards*, but freight for the cargo *homewards*, and the factor abroad had no goods to load her homewards, payment of the freight was decreed, 2 *Vern.* 212.

And

And if a ſhip is freighted to go to any place to load, and on arrival there the factor cannot, or will not put any thing on board her, after the maſter has ſtaid the days agreed on by charterparty, and made his regular proteſts, he ſhall be paid, empty or full.

Though the officers and mariners gave bond not to demand wages, unleſs the ſhip returned to *London*, ſhe arrived at a delivering port and afterwards was taken by the enemy, they had their wages to the delivering port. 2 *Vern.* 727.

If a ſhip is freighted from one port to another, and thence to a third, fourth, and ſo home to the port from whence ſhe firſt ſailed (commonly called a *trading voyage*) this is all but one and the ſame voyage, ſo as it be in conformity to the *charterparty*. *Leg. Relagatiff. de pœnis & Leg. ult. de cep. vio.*

A merchant agrees with a maſter, that if he carries his goods to ſuch a port, he will then pay him ſuch a ſum; in the voyage the ſhip is aſſaulted, entered and robbed by pirates, and part of her lading taken forth, and afterwards the remainder is brought to the port of diſcharge; yet the ſum agreed upon is not become due, for the agreement is not by the maſter performed. *Trin.* 9 *Jan.* in *C. B. Rot.* 636, *Bright* v. *Cooper*. 1 *Brownl.* 21.

Though by the *civil law* this is *vis major* or *caſus fortuitus* (the greater force or an accidental caſe) there being no default in the maſter or his mariners, and the ſame is a danger or peril of the ſea, which if not in naval agreements expreſſed, yet it is naturally implied; for it is certain, that if thoſe goods which the pirates carried away had been in ſtreſs of weather thrown overboard, the ſame would not have made a diſability as to the receipt of the ſum agreed on; for both by the *common* and *marine law*, the act of God, or that of an enemy, ſhall no ways work in private actions. 1 *Co.* 97. *Shelley's* caſe. *Reginer* and *Fogaſſa's* caſe. *Plowden Com.* But a pirate is not an enemy.

If a ſhip be freighted by the ton, and ſhe is full laden according to the *charterparty*, the freight is to be paid for the whole, otherwiſe but for ſo many ton as the lading amounted to.

If freight be contracted for the lading of certain cattle, or the like, from *Dublin* to *Weſt-Cheſter*, and ſome of them happen to die before the ſhip's arrival, the whole freight is become due as well for the dead as the living. *Jure Mar.* L. 2. C. 4. S. 8.

But if the freight be contracted for the tranſporting them, at ſo much *per* head, if death happens, there ariſeth due no more freight than only for ſuch as are living, at the ſhip's arrival at her port of diſcharge, and not for the dead. Ditto.

When cattle or ſlaves are ſent aboard, without any previous agreement for lading or tranſporting them, but generally, then freight ſhall be paid as well for the dead as the living; and if freight be contracted for the tranſporting of women, and they happen in the voyage to be delivered of children, no freight becomes due for the infants. Ditto.

If goods are ſent on board, generally, the freight muſt be according to that commonly paid for the like accuſtomed voyages. Ditto.

If a ſhip ſhall be freighted, and named to be of ſuch a burthen, and being freighted by the ton, ſhall be found leſs, there ſhall be no more paid than only by the ton, for all the goods that were laden on board. Ditto.

And if a ſhip be freighted for two hundred tons or thereabouts, the addition of *thereabouts* is commonly reduced to be within five ton, more or leſs, as the moiety of the number ten, whereof the whole is compounded. Ditto.

If a ſhip be freighted by the great, and the burthen of it not expreſſed, yet the ſum certain is to be paid. *Chaff. & Jones* verſ. *Lovering Styles* 220.

If a freighter, by loading prohibited or unlawful goods, occaſions the ſhip's detention, or otherwiſe impedes her voyage, he ſhall pay the freight contracted and agreed for.

When a ſhip is freighted *out* and *in* (or *out* and *home*) there is no freight due till the whole voyage is performed; ſo that if ſhe be caſt away coming home, the freight *outwards*, as well as *inwards*, becomes loſt. *Trin.* 9 *Jac.* B. R. *Bright* verſ. *Cowper*. *Brownlow*, Part 2. *In Chancery*. 13 *July* 1689.

A Part

A part owner of a ſhip ſued the other owners for his ſhare of the freight on finiſhing her voyage: but the other owners had fitted her out, in which the complainant would not join, whereupon the other owners complained in the admiralty; and by order there, they gave ſecurity, if the ſhip periſhed in the voyage, to make good to the plaintiff his ſhare, or to that effect; in ſuch a caſe, by the law marine and courſe of the admiralty, the plaintiff was to have no ſhare of the freight: It was referred to Sir *Lionel Jenkins* to certify the courſe of the admiralty, who certified accordingly, and that it was ſo in all places, for otherwiſe there would be no navigation; whereupon the plaintiff's bill was diſmiſſed.

If a maſter lets out his ſhip, and afterwards ſecretly takes in other goods unknown to the firſt freighter, by the law *marine* he loſes his freight; and if it ſhould ſo fall out, that any of the freighter's goods ſhould for ſafety of the ſhip be caſt overboard, the reſt ſhall not become ſubject to the average, but the maſter muſt make the damage good; though, if the goods are brought into the ſhip ſecretly and unknown to him, it is otherwiſe; and goods ſo brought in, may be ſubjected to what freight the maſter thinks fit. *Leg. Oleron*; *Leg. Naval: Rhod. Art.* 25. Conſul. Del. Mar.

When a ſhip puts into any other port than that ſhe was bound to by agreement, the maſter ſhall anſwer all damages that ſhall accrue thereby; but if ſhe was forced in by ſtorm, enemies, or pirates, he muſt afterwards proceed to that he was obliged to by the contract. *Leg. Oleron.*

In conſtruction of law, the lading of the ſhip is *tacitly* obliged for the freight, the ſame being in point of payment preferred before any other debts to which the goods ſo laden are liable, though ſuch debts, as to time, were *precedent* to the freight; for the goods remain, as it were, bailed for the ſame; nor can they be *attached* in the maſter's hands, though it is commonly conceived otherwiſe. Bald. in leg. certi Juris in † Q. in Verb. quid ergo Cod. locat.

As ſhips deſerve wages like a labourer, the actions touching the ſame are, in the eye of the law, generally conſtrued favourably for the ſhip and owners; and therefore if four parts in five of them ſhall make up their accounts with the freighters, and receive their proportions, yet the fifth man may ſue ſingly by himſelf without joining with the reſt, and this as well by the *common law* as the *law marine*. *Stanly* verſ. *Ayles*; *by Hale* 3 *Keb.* 444.

If a ſhip in her voyage happens to be taken by an enemy, and afterwards is retaken by another ſhip in amity, and reſtitution is made, and ſhe proceeds on in her voyage, the contract is not determined, though the taking by the enemy diveſted the property out of the owners; yet by the law of war, that poſſeſſion was defeaſible, and being recovered in battle afterwards, the owners become re-inveſted; ſo the contract, by fiction of law, became as if ſhe never had been taken, and ſo the entire freight becomes due. 7 *R. II. Stalkham* Abridg. 54.

It was covenanted by a charterparty, that a ſhip ſhould return by a certain time within the river of *Thames* (the dangers of the ſea excepted) and afterwards in the voyage, and within the time of the return, the ſhip was taken upon the ſea by enemies unknown to the covenanter, and being detained by them could not return within the river of *Thames*, within the time mentioned in the covenant. *Reſolved*, this impediment was within the exception, for theſe words intend as well any danger upon the ſea by pirates or men of war, as dangers of the ſea, by ſhipwreck, tempeſt, or the like. *Pickering* and *Barkly*. *Styles* 132. 2 *Roll's* Abridg. 248.

If freight be taken for a hundred tons of wine, and twenty of them leak out, ſo that there is not above eight inches from the bulge upwards, yet the freight becomes due; but, if they be under eight inches, ſome conceive it then to be in the election of the freighters to fling them up to the maſter for freight; but moſt think otherwiſe; for if all had leaked out (if there was no fault found in the ſtowage, by a ſurvey from the *Trinity-houſe*) there is no reaſon the ſhip ſhould loſe her freight; for the freight ariſes from the tonage taken, and if the leakage was occaſioned through ſtorm*, the ſame perhaps may come into an avarage. *Boyce* verſ. *Cole. Hil.* 26, 27 *Car.* II. B. R.

It

* *Maſters ſhould take care to make their regular proteſts after a ſtorm, as they may ſuffer ſeverely by omitting it.*

It is certain if a ſhip freighted by the great be caſt away, the freight is loſt; but if by the ton or parcels, and part thereof is ſaved from the wreck; *doubted* whether *pro rata*, ſhe ought not to be anſwered her freight †.

If a ſhip by *charterparty*, reciting her to be of the burthen of 200 tons, is taken to freight for a ſum certain, to be paid at her return, the ſum certain is to be paid, tho' the ſhip amounts not to that burthen.

In caſe a ſhip is freighted after the rate of 20l. for every month that ſhe ſhall be out, to be paid after arrival at the port of *London*; and the ſhip is caſt away coming up from the *Downs*, but the lading is all preſerved, in this caſe the freight is become due; for the money ariſes ſo monthly by the contract, and the place mentioned is only to ſhew where payment is to be made; for the ſhip deſerves wages like a mariner who ſerveth by the month; and though he dies in the voyage, yet his executors are to be anſwered *pro rata*. Beſides, the freight becomes due by indentment on the delivery or bringing-up of the commodities to the port of *London*, and not of the ſhip. Molloy Jur. Marit. 224, 225.

If a man freights a ſhip out, and covenants that the ſhip ſhould ſail out of that port to *Cadiz* with the firſt fair wind and opportunity, and the freighter covenants, that for the freight of all the premiſes he would pay unto the maſter 184l. if the maſter doth not aver, that the ſhip did arrive at the port of *Cadiz*, he cannot maintain an action againſt the freighter. 1 *Bulſt.* 176. 1 Inſt. 204, *a.* Dy. 76, *a.* 2 *Saund.* 350.

If the maſter enters into a *charterparty* for himſelf and owners, the maſter in that caſe may releaſe the freighters, without adviſing with the owners; but if the owners let the ſhip out to freight, whereof *J. J.* is maſter, though the maſter covenant in the ſame *charterparty* and ſubſcribes, yet his releaſe in that caſe will not bind the owners, but the owners' releaſe on the other hand will include the maſter; and the reaſon is, for that the maſter is not made a proper party to the indenture. And ſo it was ruled, where an *indenture* of *charterparty* was made between *Scudamore* and others, owners of the good ſhip called the *B.* whereof *Robert Pitman* was maſter, on the one part, and *Vandenſtene* on the other part; in which indenture the plaintiff did covenant with the ſaid *Vandenſtene* and *Robert Pitman*, and bound themſelves to the plaintiff and *Robert Pitman* for the performance of covenants in 600l. and the concluſion of the indentute was—*In witneſs whereof* the ſaid *Robert Pitman* put his hand and ſeal, and delivered the ſame: In an action of covenant, for not performing certain covenants in this indenture, the defendant pleaded the releaſe of *Pitman*, whereupon the plaintiff demurred, and it was adjudged, that the releaſe of *Pitman* did not bar the plaintiff, becauſe he was no party to the indenture; and the diverſity in that caſe was taken and agreed between an indenture reciprocal between parties on the one ſide, and parties on the other ſide, as that was; for there no bond, covenant, or grant, can be made to, or with any that is not party to the deed; but where the deed indented is not reciprocal, but is without a *Between, &c.* as *Omnibus Chriſti fidelibus*, &c. there a bond, covenant or grant, may be made to divers ſeveral perſons. *Cro. Eliz.* 56. *Scudamore & Al.* verſ. *Pitman. Trin* 29 *Eliz. in B. R.* cited in *Coke* 2 Inſtit. Fol. 673. 2 *Levinz* 74. *Cook* & *Child* and 3 *Levinz* 138. *Gilby* v. *Copley, que ſemble contra.*

If an indenture of *charterparty* be made between *A.* and *B.* owners of a ſhip of the one part, and *C.* and *D.* merchants of the other part; and *A.* only ſeals the deed on the one part, and *C.* and *D.* on the other part; but in the indenture it is mentioned that *A.* and *B.* covenant with *C.* and *D.* and *C.* and *D.* covenant with *A.* and *B:* In this caſe, *A.* and *B.* may join in an action againſt *C.* and *D.* though *B.* never ſeals the deed, for he is a party to the deed, and *C.* and *D.* have ſealed the other part to *B.* as well as to *A.* *Clement* verſ. *Menley*, 2 *Roll's Abr.* 22.

Covenant upon a *charterparty* by which the maſter of a ſhip covenants to ſail with the firſt fair wind to *Barcelona*, and that the mariners ſhall attend with a boat to relade the ſhip, and then to return with the firſt fair wind to *London*, and to unlade and deliver the goods; and the merchants covenant to pay ſo much for freight, and ſo much for demorrage every day; the maſter brought his action for the freight and demorrage, and declares that he ſailed ſuch a day, with the firſt fair wind, and upon all the other points.

† *It is common to give up what is ſaved to the aſſurers, that the aſſured may recover the whole inſurance.*

points. The defendant pleads *quoad* the freight, that the ſhip did not return directly to *London*, but went to *Alicant* and *Tangier*, and made divers deviations, and by theſe delays the goods were ſpoiled; and as to the demorrage, that this was occaſioned by the negligence of the mariners, in not attending with the boat, to relade the ſhip, to which the plaintiff demurred; and *per Curiam pro Quer.* for that the covenants are mutual and reciprocal, upon which each ſhall have his action againſt the other, but ſhall not plead the breach of one in bar of another, for perhaps the damage of the one ſide and the other are not equal. 3 *Levinz* 41. *Cole* cont. *Shallet*; Sir *Thomas Jones*, 216. *Showers* v. *Cudmore*.

If a factor freights a ſhip, by order and for account of another, out and home, and a *charterparty* is accordingly made and indented between him and the maſter, the factor is liable for the freight and performance of all covenants; but if the ſhip be only freighted outwards, and loaded by the factor, the goods ſhipped are only liable for the freight, and no demands to be made on the freighters in virtue of the *charterparty*, but the perſon who receives the goods is to pay it, according to the tenor of the bill of lading. *Lex Merc.* P. 117.

If a ſhip is freighted out and home, and after having delivered her cargo at the place agreed on, there are no goods provided for her re-lading, the maſter muſt ſtay the days of demorrage agreed on by *charterparty*, and make his regular proteſt for his freighter's non-compliance, who will in this caſe be obliged to pay him empty for full; though ſhould the maſter not wait the time ſtipulated, or omit to make his proteſt, he will loſe his freight; and in caſe the maſter, on his finding no goods provided by his freighter, ſhould determine to load ſome on his own account, as ſalt, or the like, this will not obſtruct his recovering his freight; for if the ſhip had been laden only with ſalt by the merchant, which (it may be) would not pay half the freight, yet the ſhipper or proprietor may at pleaſure abandon the ſame to the maſter for his freight, and he can demand no more by the *charterparty*; but if the maſter take in ſuch ſalt on his own account, before the days of demorrage are expired, and that by ſome condition made with his freighter, he may claim freight, then this latter is to have the benefit of the ſalt in deduction of the ſaid freight.

Form of a *Charterparty* of *Affreightment*.

THIS charterparty, *indented, made*, &c. *between* A. B. *of*, &c. *mariner, maſter, and owner of the good ſhip or veſſel called*, &c. *now riding at anchor at*, &c. *of the burthen of two hundred tons, or thereabouts, of the one part, and* C. D. *of*, &c. *merchant, of the other part*, witneſſeth, *that the ſaid* A. B. *for the conſideration herein after mentioned*, hath *granted, and to freight letten, and by theſe preſents doth grant, and to freight let, unto the ſaid* C. D. *his executors, adminiſtrators, and aſſigns, the whole tonnage of the hold, ſternſheets, and half deck, of the ſaid ſhip or veſſel, called*, &c. *from the port of* London *to*, &c. *in a voyage to be made by the ſaid* A. B. *with the ſaid ſhip, in manner hereafter mentioned (that is to ſay) to ſail with the firſt fair wind and weather, that ſhall happen, after*, &c. *next, from the ſaid port of* London, *with the goods and merchandize of the ſaid* C. D. *his factors, or aſſigns, on board, to*, &c. *aforeſaid (the dangers of the ſea excepted) and there unlade and make diſcharge of the ſaid goods and merchandizes; and alſo ſhall there take into, and aboard the ſaid ſhip again, the goods and merchandizes of the ſaid* C. D. *his factors, or aſſigns, and ſhall then return to the port of* London, *with the ſaid goods, in the ſpace of*, &c. *limited for the end of the ſaid voyage.* In conſideration *whereof the ſaid* C. D. *for himſelf, his executors, and adminiſtrators, doth covenant, promiſe, and grant, to and with the ſaid* A. B. *his executors, adminiſtrators, or aſſigns, by theſe preſents, that the ſaid* C. D. *his executors, adminiſtrators, factors, or aſſigns, ſhall, and will, well and truly pay, or cauſe to be paid unto the ſaid* A. B. *his executors, adminiſtrators, or aſſigns, for the freight of the ſaid ſhip and goods, the ſum of*, &c. *(or ſo much per ton) without twenty-one days after the ſaid ſhip's arrival, and goods returned and diſcharged at the port of* London *aforeſaid, for the end of the ſaid voyage: And alſo ſhall and will pay for demorrage (if any ſhall be by the default of him the ſaid* C. D. *his factors or aſſigns) the ſum of*, &c. per *day, daily, and every day, as the ſame ſhall grow due. And the ſaid* A. B. *for himſelf, his executors, and adminiſtrators, doth covenant, promiſe, and grant, to and with the ſaid* C. D. *his executors, adminiſtrators, and aſſigns, by theſe*

preſents,

preſents, that the ſaid ſhip or veſſel ſhall be ready at the port of London, *to take in goods by the ſaid* C. D. *on or before,* &c. *next coming. And the ſaid* C. D. *for himſelf, his,* &c. *doth covenant and promiſe, within ten days after the ſaid ſhip or veſſel ſhall be thus ready, to have his goods put on board the ſaid ſhip, to proceed on in the ſaid voyage; and alſo on the arrival of the ſaid ſhip at,* &c. *within,* &c. *days, to have his goods ready to put on board the ſaid ſhip, to return on the ſaid voyage. And the ſaid* A. B. *for himſelf, his executors, and adminiſtrators, doth further covenant and grant to and with the ſaid* C. D. *his executors, adminiſtrators, and aſſigns, that the ſaid ſhip or veſſel now is, and at all times during the ſaid voyage ſhall be, to the beſt endeavours of him the ſaid* A. B. *his executors, and adminiſtrators, and at his and their own proper coſts and charges, in all things made and kept ſtiff, ſtaunch, ſtrong, well apparelled, furniſhed, and provided, as well with men and mariners, ſufficient and able to ſail, guide, and govern the ſaid ſhip, as with all manner of rigging, boats, tackle, apparel, furniture, proviſion, and appurtenances fitting and neceſſary for the ſaid men and mariners, and for the ſaid ſhip during the voyage aforeſaid.* In witneſs, *&c.*

The following is the Form of a *Charterparty*, whereby the Owners of one Moiety of a Ship let to Freight their Share to the Owners of the other Moiety.

THIS *Charterparty*, indented, made, &c. between *A. B.* and *C. D.* of *London*, merchants, owners of the one moiety, or half part of the good ſhip or veſſel called the *Neptune*, of the burthen of 200 tons, with the like moiety of all the ſails, maſts, tackle, apparel, furniture, ordnance, and appurtenances thereunto belonging, now riding at anchor in the river of *Thames*, within the port of *London*, of which the ſaid *C. D.* is maſter, *of the one part*, and *E. F.* and *G. H.* of *London*, merchants, owners of the other moiety and reſidue of the ſaid ſhip, with the maſts, ſails, tackle, ordnance, furniture, and apparel thereunto belonging, *on the other part*, WITNESSETH, that the ſaid *A. B.* and *C. D.* have granted and letten to freight, and *by theſe preſents* do grant and let to freight, all their ſaid part and moiety of the ſaid ſhip and premiſes, unto the ſaid *E. F.* and *G. H.* for a voyage with her (by God's grace) to be made in manner and form following:

That is to ſay, That the ſaid *A. B.* and *C. D.* for them, their executors, adminiſtrators and aſſigns, *do hereby* covenant and grant to and with the ſaid *E. F.* and *G. H.* for them, their and each of their executors and adminiſtrators by *theſe preſents*, that the ſaid ſhip (being already laden) ſhall, with the firſt good wind and weather, after the date hereof (God permitting) ſail directly from the ſaid river of *Thames*, to the port of *Leghorn* in *Italy* (the perils and dangers of the ſeas excepted) and there unlade and diſcharge ſuch goods and merchandizes as ſhall be directed and appointed by the ſaid *E. F.* and *G. H.* or one of them, their, or one of their factors or aſſigns, in good condition; and from thence ſhall ſail, and take her direct courſe, as wind and weather ſhall ſerve, with as much ſpeed as may be (the perils and dangers of the ſea excepted) to *Venice*, and there ſhall ſtay and abide the ſpace of twenty working days, next after her arrival there, to unlade all ſuch goods and merchandizes as ſhall remain on board for account of *E. F.* and *G. H.* after her firſt delivery at *Leghorn* as aforeſaid; and to relade ſuch goods, wares, and merchandizes as the ſaid *E. F.* and *G. H.* or either of them, their or either of their factors or aſſigns, ſhall think fit to charge and re-lade aboard and into the ſaid ſhip, *that is to ſay*, ſo much as the ſaid ſhip can conveniently carry, over and above her victuals, tackle, ammunition, apparel, and furniture.

And the ſaid ſhip with her ſaid lading ſhall with the firſt good wind and weather, after the expiration of the ſaid twenty days, ſail and proceed from the ſaid city of *Venice* to *London*, with the ſaid goods, within the time, &c. In conſideration whereof the ſaid *E. F.* and *G. H.* for themſelves, and either of them, their and either of their executors and adminiſtrators, do covenant, promiſe, and grant to and with the ſaid *A. B.* and *C. D.* and either of them, their and either of their executors, adminiſtrators, and aſſigns, *by theſe preſents*, that they the ſaid *E. F.* and *G. H.* or one of them, their, or one of their executors, adminiſtrators, or aſſigns, ſhall and will well and truly pay or cauſe to be paid to the ſaid *A. B.* and *C D.* or one of them, their, or one of their executors

or

or adminiſtrators, within the ſaid city of *London*, for every ton of ſuch wares and merchandizes as ſhall be laden or unladen in the ſaid ſhip, during the ſaid voyage, the ſum of, &c. *(counting the tonnage according to cuſtom; or if a certain ſum is agreed for the voyage, out and home, or ſo much per month)* for the part and intereſt of the ſaid *A. B.* and *C. D.* in the ſaid ſhip, and for, and in reſpect of the freight and hire of their part of her; which ſaid money is to be paid in manner and form following, *That is to ſay*; one-third part thereof upon the right diſcharge of the ſaid ſhip, and another third part thereof within the ſpace of ſix weeks then next following, and the remaining third part thereof within the ſpace of two months next enſuing after the end and determination of the ſaid ſix weeks. And alſo ſhall and will pay for demorrage (if any ſhall be by default of the ſaid *E. F.* and *G. H.* their factors or aſſigns) the ſum of —— per day, daily, and every day, as the ſame ſhall grow due.

And the ſaid *A. B.* and *C. D.* for them, and either of them, their and either of their executors and adminiſtrators, do covenant and grant to and with the ſaid *E. F.* and *G. H.* their executors and adminiſtrators, *by theſe preſents*, that the ſaid ſhip, for their part, ſhall be ſtrong and ſtaunch, and well and ſufficiently tackled and apparelled, with ſails, ſail-yards, anchors, cables, ropes, gun-ſhot, artillery, gunpowder, and all other inſtruments, tackle, and apparel, needful and neceſſary for ſuch a ſhip and for ſuch a voyage, together with an able maſter, and ſufficient number of mariners.

And *to the performance* of all, and every the covenants, grants, articles, and agreements, on the parts, and behalfs of every of the ſaid *parties*, truly to be holden, performed, and kept, in all things as is aforeſaid, the ſaid *parties* to theſe *preſents*, do bind themſelves to one another: *that is to ſay*, the ſaid *A. B.* and *C. D.* do by theſe *preſents* bind themſelves, and either of them, and their ſeveral executors and adminiſtrators, goods, and their part and intereſt in the ſaid ſhip, with the furniture thereof, to the ſaid *E. F.* and *G. H.* and to their executors and adminiſtrators; and the ſaid *E. F.* and *G. H.* do in like manner bind themſelves, and either of them, their and either of their executors, adminiſtrators, and aſſigns, and all their goods and intereſt in the ſaid ſhip, to the ſaid *A. B.* and *C. D.* their executors and adminiſtrators, in the ſum or penalty of one thouſand pounds, of lawful money of *Great-Britain*, by the party or parties infringing the ſaid covenants, or any of them, to the other party or parties truly obſerving, to be paid by virtue of theſe *preſents*.

If before the departure of the ſhip there ſhould happen an embargo, occaſioned by war, repriſals, or otherwiſe, with the country to which the ſhip is bound, ſo that ſhe cannot proceed on her voyage, the *charterparty* ſhall be diſſolved without damages or charges to either party, and the merchant ſhall pay the charges of unlading his goods; but if the reſtraint ariſes from a difference between the parties themſelves, the *charterparty* ſhall ſtill remain valid in all its points.

If the ports be only ſhut, and the veſſels ſtopped for a time, the *charterparty* ſhall ſtill be valid, and the maſter and merchant ſhall be reciprocally obliged to wait the opening of the ports, and the liberty of the ſhips, without any pretenſions for damages on either ſide.

However, the merchant, at his own charges, may unlade his goods during the ſhutting up of the port, upon condition either to relade them, or indemnify the maſter. The great variety of circumſtances which different voyages occaſion, naturally produce a correſpondent diverſity in charterparties, and were I to quote a ſeries of all that offers on this head, I ſhould greatly exceed the limits I have preſcribed myſelf. I therefore the rather omit it, as from thoſe preceding others may be formed, to anſwer every purpoſe required; I ſhall, therefore, to what has already been ſaid about freight, add here the copy of a bill of lading, which is a writing wherein maſters of ſhips acknowledge the receipt of goods abroad, and oblige themſelves to deliver the ſame in good order and condition at the place where they are conſigned to. There muſt always be three made out, and in *England* they are to be on ſtamped paper, otherwiſe they are invalid, of which, *one* ſhould be remitted *per* firſt poſt after ſigning to the perſon the goods go to, the *ſecond* remain with the ſhipper, and the *third*, made out on an unſtamped paper, be given to the maſter for his government, in aſcertaining the ſpecific merchandiſe he has on board.

The

The Form of a Bill of Lading, *viz.*

W. B. No. 1. *a.* 10. } SHIPPED *in good order by* A. B. *merchant, in and upon the good ſhip called whereof* C. D. *is maſter, now riding at anchor in the river of* Thames, *and bound for* Alicant *in* Spain, *ten bales, containing fifty pieces of broad cloth, marked and numbered as* per *margin, and are to be delivered in the like good order and condition at* Alicant *aforeſaid (the dangers of the ſeas excepted) unto* E. F. *merchant there, or to his aſſigns, he or they paying for the ſaid goods* - per *piece* freight, *with* primage *and* average *accuſtomed.* In witneſs whereof *the maſter or purſer of the ſaid ſhip hath affirmed to three* bills of lading *of this tenor and date, one of which bills being accompliſhed, the other two to ſtand void. And ſo God ſend the good ſhip to her deſigned port in ſafety.* Amen.

Dated at London.

The difference between a bill of lading and a charterparty is, that the firſt is required and given for a ſingle article or more, laden on board a ſhip that has ſundry merchandize ſhipped for ſundry accounts. Whereas a charterparty is a contract for the whole ſhip. Bills of lading ought to be ſigned by the maſter within twenty-four hours after the delivery of the goods on board. But upon delivery of the goods, the maſter, or other perſon officiating for the maſter in his abſence, is to give a common receipt for them, which is to be delivered up, upon the maſter's ſigning the bills of lading.

Upon delivering the goods at the port of deſtination to the ſhipper's factors or aſſigns, giving up the bill of lading ſent to the factors or aſſigns is not a ſufficient diſcharge, but the maſter may inſiſt upon a receipt.

DEMORRAGE, or DEMURRAGE, is an allowance made to the maſter of a ſhip by his freighters, for ſtaying longer in a place than the time firſt appointed for his departure, or his ſtay at the delivering ports; and is generally inſerted in the charterparty to be paid daily as it becomes due; the days are always limited, ſo that on expiration thereof, and proteſts duly made, the maſter is at liberty to proceed, as is before mentioned. The price is regulated by the burthen of the ſhip.

BOTTOMRY is the act of borrowing money upon the keel or bottom of a ſhip by engaging the veſſel for the re-payment, ſo that in caſe ſhe miſcarry, the lender loſes his money, though, if ſhe finiſhes her voyage and arrives in ſafety, the borrower is to repay the loan with a premium or intereſt agreed on (which is always adequate to the riſk) and if this is denied, or deferred, the lender ſhall have the ſhip.

Bottomry is likewiſe called *Fœnus Nauticum, Pecunia trajactitia,* and ſometimes *Uſura Marina,* though improperly, for notwithſtanding the intereſt in theſe contracts is always much larger than that the law preſcribes for monies lent on landed ſecurities, yet it is never accounted *Uſury,* as marine loans are furniſhed at the hazard of the lender, which the others are not; and where the riſk is greateſt on the advanced monies, the profit ought reaſonably to be ſo too.

Money lent on bottomry is commonly on the ſhip only, though ſometimes it is upon the perſon of the borrower, and ſometimes on both; the firſt is where a man takes up money, and obliges himſelf, that if the ſhip agreed on arrives at ſuch a port, then to re-pay the loan, with the intereſt ſtipulated, but if the ſhip miſcarry, then nothing. But when money is lent at intereſt, it is delivered at the peril of the borrower, and the profit of this is merely the price of the loan; whereas the profit of the other is a reward for the danger and adventure of the ſea, which the lender takes upon himſelf, and makes the intereſt lawful. *Uſura Marina* joins the advanced money and the danger of the ſea together; and this obligatory ſometimes to the borrower's ſhip, goods, and perſon. *Sea laws,* 206, 207. *Jacob's Law Dictionary.*

The intereſt on bottomry may amount to 30 or 40 *per cent,* and yet not fall within the ſtatute of *Uſury.* As thus, 5 *per cent.* for the legal intereſt of the principal ſum advanced, 15 *per cent.* for the hazard of the voyage outwards, 10 *per cent.* for the hazard of the return home, or more according to the agreement, and it is to be remembered, that the lender will conſider the premium or price for inſuring the principal at home, whether he pays it, or takes it upon himſelf. Ditto,

Where bills or bonds of bottomry are ſealed, and the money is paid, if the ſhip receives injury by ſtorm, fire, &c. before the beginning of the voyage, then only the perſon borrowing runs the hazard, unleſs it be otherwiſe provided; as that, if the ſhip ſhall not arrive at ſuch a place at ſuch a time, &c. there the contract hath a beginning, from the time of the ſealing: but if the condition be, that if ſuch ſhip ſhall ſail from *London* to any port abroad, and ſhall not arrive there, &c. then, &c. there the contingency hath not its beginning till the departure.

A maſter of a ſhip may not take up money on bottomry in places where his owners reſide, except he be a part owner, and then he may only take up as much as his ſhare in the ſhip will anſwer; for if he exceeds that, his own eſtate is liable to make ſatisfaction *; but when a maſter is in a ſtrange country, where there are no owners, nor any goods of theirs, or of his own, and for want of money he cannot perform his voyage, he may in this caſe take up money on bottomry, and all the owners are chargeable thereto; but this is underſtood where money cannot be procured by exchange or any other means: And in the firſt caſe, the owners are liable by their veſſel, though not in their perſons; but they have their remedy againſt the maſter. *Salk.* 35. 2 Mod. Caſes 79.

Some maſters of ſhips, who had inſured or taken up money on *bottomry*, to a greater value than their adventure, having made it a practice to caſt away and deſtroy the ſhips under their charge, it is made felony, and the offenders to ſuffer death. 10 *Car.* II. Cap. 6.

By another ſtatute it is enacted, that after the 1ſt of *Auguſt*, 1746, every ſum lent on *bottomry*, or at *reſpondentia*, upon any ſubjects' ſhips to, or from the *Eaſt-Indies*, ſhall be lent only on the ſhip, or the merchandizes laden on board her, and ſo expreſſed in the condition of the bond, and the benefit of *ſalvage* ſhall be allowed to the lender, his agents, &c. who alone ſhall have a right to make aſſurance on the money lent; and no borrower of money on bottomry, or at reſpondentia, as aforeſaid, ſhall recover more on any aſſurance than the value of his intereſt on the ſhip or effects, excluſive of the money borrowed. And if the value of his intereſt doth not amount to the money borrowed, he ſhall be reſponſible to the lender for the ſurplus, with lawful intereſt for the ſame, together with the aſſurance and all charges, &c. notwithſtanding the ſhip and merchandize be totally loſt. 19 *Geo.* II. Cap. 37. P. 569.

All his majeſty's ſubjects were prohibited during the continuance of the late war to lend money on bottomry or reſpondentia, or any ſhips or goods belonging to *France*, or to any of the *French* dominions or plantations, or the ſubjects thereof, and in caſe they did, the contracts and agreements to be void, and they or any agent or broker interfering therein was to forfeit 500l. &c. 21 *Geo.* II. P. 76.

Some have practiſed the taking up monies on a fictitious ſuppoſition, the condition reciting, *Whereas there is ſuch a ſhip* (naming her) *bound to* Amſterdam, *whereof ſuch a man is maſter* (although there be neither ſuch a ſhip or maſter exiſting) *that if that ſhip ſhall not arrive at ſuch a place within twelve months, the money agreed on ſhall be paid; but if the ſhip ſhall arrive, then nothing*; this is an unreaſonable way of raiſing money copied from the *Italians*; and though it is alſo very unconſcionable, and, as to eternal right, unjuſt; yet it has had a currency between the neceſſitous and avaricious part of mankind, and it was adjudged † that ſuch a contract was good, according to the common law of this realm, and *that* on a ſpecial verdict; but though it has this ſanction, yet the prohibiting inſurance, *intereſt or no intereſt* (as by the afore-recited act) will tend to render it at leaſt leſs practicable, if not utterly to deſtroy it. P. 77.

* Hob. 12. *Mo.* 918. *Noy* 95. *Latch* 252. *Salk.* 34. *Lex. Merc.* 102. 122.
† C. B. *Hil.* 22, 23. *Car.* II.

The

The Form of a Bill of Bottomry.

TO all people *to whom these presents shall come, I* A. B. *of*, &c. *owner and master of the ship called*, &c. *of the burthen of two hundred tons, now riding at*, &c. *and bound for*, &c. *in the* West-Indies, *send greeting; Whereas I, the said* A. B. *am at this time necessitated to take up, upon the adventure of the said ship, called*, &c. *the sum of* 100l. *for setting forth the said ship to sea, and furnishing her with provisions for the said voyage: which* C. D. *of*, &c. *merchant, hath on request lent unto me, and supplied me with, at the rate of* 20l. *for the said* 100l. *during the said voyage:* Now know ye, *that I the said* A. B. *do by these presents for me, my executors and administrators, covenant and grant to and with the said* C. D *that the said ship shall with the first fair wind, after the day*, &c. *depart from the river* Thames, *and shall, as wind and weather shall serve, proceed in her voyage to*, &c. *in the* West Indies; *and having there tarried until*, &c. *and the opportunity of a convoy* (if in time of war) *or being sooner dispatched* (which shall first happen) *shall return from thence, and shall as wind and weather shall serve, directly sail back to the river of* Thames, *to finish her said voyage: And I the said* A. B. *in consideration of the said sum of* 100l. *to me in hand paid by the said* C. D. *at and before the sealing and delivery of these presents, do hereby bind myself, my heirs, executors, and administrators, my goods and chattels, and particularly the said ship, with the freight, tackle and apparel of the same, to pay unto the said* C. D. *his executors, administrators, or assigns, the sum of* 120l. *of lawful* British *money, within one and twenty days next after the return and safe arrival of the said ship, in the said river of* Thames, *from the said intended voyage. And I the said* A. B. *do for me, my executors and administrators, covenant and grant, to and with the said* C. D. *his executors and administrators, by these presents, that I the said* A. B. *at the time of sealing and delivery of these presents, am true and lawful owner, and master of the said ship, and have power and authority to charge and engage the said ship, as aforesaid; and that the said ship shall at all times, after the said voyage, be liable and chargeable for the payment of the* 120l. *according to the true intent and meaning of these presents.* And lastly, *it is hereby declared and agreed, by and betweeen the said parties to these presents, that in case the said ship shall be lost, miscarry, or be cast away, before her next arrival in the said river of* Thames, *from the same intended voyage, that then the said payment of the said* 120l. *shall not be demanded, or be recoverable from the said* C. D. *his executors, administrators, or assigns; but shall cease and determine, and the loss thereby be wholly borne and sustained by the said* C. D. *his executors and administrators: And that then, and from thenceforth, every act, matter and thing herein contained, on the part and behalf of the said* A. B. *shall be void: any thing herein contained to the contrary notwithstanding.* In witness, *&c.*

Of *Ballast.*

THOUGH Ballast has been adjudged to be no part of a ship's furniture, yet it is so requisite to the sailing of most vessels, as to render an enquiry into its cost, and the laws about it, very necessary, while treating on maritime affairs: It generally consists of sand, gravel, or stone, though any heavy matter answers the purpose, which is to sink the vessel to its proper depth in the water, or so to adjust weight and counterpoise, as to enable her to bear sail without oversetting. *Linter's* case, *Leon.* 6. 47.

All

All maſters of ſhips, lying in the river of *Thames*, ſhall pay to the corporation of *Trinity-houſe*, for all ballaſt demanded and entered at the ballaſt office, the rates following, viz. for every ton conſiſting of twenty hundred weight, carried to any ſhip employed in the coal trade, 12d. and for every ton carried to any other *Britiſh* ſhip 15d. and for every ton carried to any foreign ſhip 19d. And the corporation of *Trinity-houſe* ſhall pay fr the raiſing and carrying every ton of ballaſt, 9d. whereof 6d. ſhall be paid to the two ballaſtmen, and 3d. for the uſe of the lighters. 6 *Geo.* II. C. 29. S. 1.

Nothing in this act ſhall alter the price of waſhed ballaſt.

If any ballaſtman ſhall deliver any ballaſt, which ſhall fall ſhort of quantity; or ſhall neglect to deliver to any ſhip ſuch quantity as the rulers of the ballaſt office ſhall by their uſual tickets direct; or ſhall deliver more, or other ballaſt than ſhall be directed, every ballaſtman ſo offending, and oath being made of the fact within ten days after the offence, or within ten days after the next return of ſuch ſhip, by the maſter, or other officer of any ſuch ſhip, before any ſuperviſor of the ballaſt office, being an elder brother, ſhall for every ton, which ſhall appear to fall ſhort, and for every ton, directed by the ballaſt-rulers, which ſuch ballaſtman ſhall neglect to deliver, and for every ton delivered contrary to the directions of the ſaid rulers, forfeit 2s. 6d. S. 3.

The ſaid maſter, wardens, and aſſiſtants, ſhall make good to the maſter of ſuch ſhip, the quantity or value of the ballaſt, which ſhall be found deficient; and in caſe ſuch recompence ſhall not be made within ten days after the ſame ſhall be demanded, the corporation ſhall forfeit 50l. &c. which recompence the corporation are impowered to ſtop out of the wages to ſuch ballaſtmen, over and above the penalties. S. 4.

No perſon ſhall oblige any ballaſtman to deliver ballaſt, which ſhall be directed by the rulers of the office to be carried to any other ſhip; and if any perſon ſhall fraudulently receive any greater quantity of ballaſt, than they ſhall enter and pay for at the office, every perſon ſo offending, and being thereof convicted, upon oath of one witneſs, before a juſtice of peace for the city of *London*, or the counties of *Middleſex*, *Eſſex*, *Kent*, or *Surrey*, within their reſpective juriſdictions, ſhall for every ton of ballaſt forfeit 2s. 6d. S. 5.

If any ballaſtman ſhall refuſe to work for the wages herein mentioned, or having contracted to ſerve for any term, ſhall quit ſuch ſervice, or ſhall depart from the ſervice of the corporation, without giving three months notice in writing to the ſuperviſors of the ballaſt office; or ſhall refuſe to work, or ſhall not work in ſuch ſtations in the river *Thames* as the corporation ſhall appoint, or ſhall work in any ſtation contrary to the orders of the rulers of the office, given in writing, or ſhall join in any combination to raiſe wages, or obſtruct the ſervice of the corporation, or the navigation of the river, every perſon ſo offending and being convicted as aforeſaid, ſhall forfeit 5l.—S. 6.

The corporation of *Trinity-houſe* ſhall cauſe marks to be ſet on the ſtem and ſtern of every lighter, between every two gauge marks now placed on the ſtem and ſtern, that the tonnage of every ſuch lighter may be diſtinguiſhing by a gradual progreſſion of two tons and a half. S. 7.

It ſhall be lawful for the maſters of ſhips, taking ballaſt, to meet in the ſquare at *Billingſgate*, on the third *Monday* in *June*, in every year, and to adjourn as the majority of them ſhall think fit, and by writing under the hands and ſeals of the major part of them, to appoint perſons, having been maſters or mates of ſhips, to inſpect the ballaſt lighters, which perſons are impowered to examine the marks; and in caſe ſuch perſons ſhall ſuſpect that any of the marks have been altered, and ſhall at the ballaſt office require the ſaid lighter to be re-weighed, the corporation ſhall, within ten working days after ſuch requeſt, cauſe ſuch lighter to be re-weighed; and in caſe the ſame ſhall be found to be of as great tonnage, as by the marks ſhall be noted, the charge of ſuch re-weighing ſhall be paid by the perſons requiring the ſame; and in caſe ſuch perſons ſhall not pay the charge within ten days after ſuch re-weighing, they ſhall forfeit 5l. but if ſuch lighter ſhall be found of leſs tonnage than the marks denote, the charge of ſuch re-weighing ſhall be borne by the corporation, who ſhall cauſe the marks on the ſtem and ſtern of ſuch lighter, to be placed in ſuch manner as to denote the true tonnage; and in caſe the corporation ſhall neglect to have ſuch lighter re-weighed, or to make the ſame according to this act, the corporation ſhall forfeit 50l. &c. S. 8.

No

No more than two lighters ſhall be required to be re-weighed in any one week. 6 *Geo.* II. C. 29. S. 9.

It ſhall be lawful for any maſter of a ſhip to appoint two perſons belonging to ſuch ſhip (whereof the mate to be one) to go on board any lighter (bringing ballaſt to ſuch ſhip, to inſpect the marks before and after the delivery of ſuch ballaſt; and every ballaſtman ſhall immediately, before the delivery of ballaſt to any ſhip, trim ſuch lighter ſo as to make the ſame ſwim, at equal marks at the ſtem and ſtern, and pump all the water out; and if any perſon working on board ſuch lighter, ſhall hinder any perſon ſo appointed from going on board ſuch lighter, or ſhall begin to deliver the ballaſt before ſuch lighter ſhall be trimmed to ſwim at equal marks, and the water pumped out, every perſon ſo offending ſhall forfeit 5l. S. 10.

If any ballaſtman ſhall work, or deliver ballaſt, in any lighter not weighed, marked, numbered, and allowed by the corporation; or ſhall alter or counterfeit the gauge mark, or the number of ſuch lighter, he ſhall forfeit 10l. S. 11.

If any ballaſtman ſhall demand and receive from any maſter or officer, of any ſhip, any money, on account of ballaſt, or the delivery of the ſame, he ſhall forfeit 40s. S. 12.

The ballaſtmen employed in the ſervice of the corporation ſhall be ſubject to the regulations of the corporation, provided ſuch regulations do not extend to the lowering the wages. S. 13.

It ſhall be lawful for any maſter of a ſhip to carry as ballaſt from *London*, or any part of the river *Thames*, any dung, chalk, ſoap, aſhes, flints, clay, or other goods, now claimed to be furniſhed as ballaſt, ſubject to the reſtrictions herein after mentioned.—S. 14.

The maſter of every ſuch ſhip ſhall firſt make entry at the ballaſt office, or with the officer of the ſaid corporation at *Graveſend*, of the ſaid goods, and the name of ſuch ſhip, and of the maſter. S. 15.

At the time of ſuch entry, the maſter of ſuch ſhip ſhall pay for ſuch licence to the corporation 1d. for every ton of the ſaid goods. S. 16.

If any maſter of a ſhip ſhall put on board any of the ſaid goods before ſuch entry and payment, or ſhall ſhip any greater quantity than ſhall be ſo entered and paid for, he, on conviction before one juſtice, ſhall forfeit 5l. &c. S. 17.

Provided that the whole quantity of dung and compoſt, licenced to be ſhipped for the uſe of the coaſters and colliers, does not exceed three thouſand tons in any one year, to commence from the firſt of *June*; and that the whole quantity of chalk and chalk rubbiſh does not exceed three thouſand tons; and that the quantity of ſoap aſhes, and all other commodities herein licenſed, does not exceed two thouſand tons, in any one year. S. 18.

All entries of the goods ſo licenſed, which ſhall be ſhipped in the laſt ſeven days of *May*, ſhall be made at the *Trinity-houſe* in *London*, and not at *Graveſend*. S. 19.

It ſhall be lawful for any maſter of any ſhip to carry as ballaſt, from any part of the river *Thames*, any bricks, tiles, lime or other merchandizeable commodity, without paying any thing to the corporation. S. 20.

This act ſhall be a public act, &c.

This act ſhall continue from the firſt of *June*, 1733, for five years, and to the end of the next ſeſſion of parliament. S. 20.

Continued for ſeven years, &c. by 11 Geo. II. *cap.* 12, *and further continued for* 11 *years, and from thence to the end of the then next ſeſſion of parliament by* 18 Geo. II. *p.* 548. S. 25.

And as it has been the practice of many unthinking maſters of veſſels, regardleſs of the public welfare, to throw their ballaſt out any where, to the great detriment of many ports, &c. the legiſlature thought proper to prevent the continuance of ſo prejudicial a cuſtom, by paſſing the ſubſequent law; the preamble to which ſets forth, that maſters, and other perſons belonging to ſhips, coming into havens, navigable rivers, &c. do throw out their ballaſt, either on the ſhore or on the ſide, and below the uſual ſea mark, and do other annoyances, to the detriment and obſtruction of navigation, &c.

For remedy whereof, *it is enacted*, that if, after *June* 1, 1746, any maſter or owner, or any perſon acting as maſter of any ſhip or other veſſel whatſoever, ſhall caſt, throw out,

out, or unlade, or, if after the day aforeſaid, there ſhall be thrown out, &c. of any veſſel, being within any haven, port, road, channel, or navigable river, within *England*, any ballaſt, rubbiſh, gravel, earth, ſtone, wreck, or filth, but only upon the land, where the tide or water never flows or runs; any one or more juſtices for the county or place where or near which the offence ſhall be committed, upon information thereof, ſhall ſummon, or iſſue his warrant, for bringing the maſter or owner of the veſſel, or other perſon acting as ſuch, before him, and upon appearance or default, ſhall proceed to examine the matter of fact, and upon proof made thereof, either by confeſſion of the party, or on view of the juſtice, or upon the oath of one or more credible witneſſes (which oath the ſaid juſtice is to adminiſter) he ſhall convict the ſaid maſter, &c. and fine him at his diſcretion for every ſuch offence any ſum not exceeding 5l. nor under 50s. &c. and for want of ſufficient diſtreſs, the juſtice is to commit the maſter, or perſon acting as ſuch, and convicted as aforeſaid, to the common gaol or houſe of correction, for the ſpace of two months, or until payment of the penalties. 19 *Geo.* II. P. 404, 405.

The following act explaining and amending the former, paſſed 32 Geo. II.

The act of 6 *Geo.* II. for the better regulating laſtage and ballaſtage in the river *Thames*, being near expiring, it is enacted that all the powers, clauſes, and proviſions therein, other than ſuch as are hereby amended, ſhall continue in force until the 24th of *June*, 1770, and from thence to the end of the then next ſeſſion of parliament. 32 *Geo.* II. Sect. 1.

Dung, compoſt, ſoil, earth, chalk, rubbiſh, ſoap aſhes, ſoap waſte, flints, tobacco-pipe clay, or other clay, or any other goods, claimed to be furniſhed as ballaſt by the *Trinity Houſe*, (ſubject nevertheleſs to the payment of rates and duties, and under the proviſos and reſtrictions aforementioned) may be ſhipped in colliers or coaſters from *London*, or any part of the *Thames*, ſo that the ſame doth not exceed 3000 tons, over and above 2000 tons, allowed to be ſhipped by the leſſees or occupiers of layſtalls, on the condition after mentioned; of chalk and chalk rubbiſh 3000 tons, and of ſoap aſhes and other commodities claimed to be furniſhed as ballaſt by the *Trinity Houſe*, 2000 tons. Sect. 2.

Before ſhipping the ballaſt claimed by the *Trinity Houſe*, the maſter or owner ſhall make a due entry at the ballaſt office of the *Trinity Houſe*, *London*, or at the *Trinity Houſe* at *Graveſend* (unleſs the ballaſt be ſhipped in the laſt ſeven days of the month of *May*, then the entry at *London* only) and of the ſhip's name and of the maſter, and at the ſame time to pay to the corporation 1d. a ton for a licence. Sect. 3.

If any of the commodities be ſhipped before entry, or any greater quantity ſhipped than entered, to forfeit 5l. Sect. 4.

Bricks, tiles, lime, or merchantable commodities, to be ſhipped without paying for licenſe. Sect. 5.

All lighters and other veſſels employed for carrying dung, &c. on board any ſhip or veſſel, to be firſt weighed, marked, and numbered, by an officer of the *Trinity Houſe*, on the penalty of 5l. and a gauge mark of the number and tonnage of the veſſel to be painted on the ſtem or ſtern of the veſſel; if removed to forfeit 5l. Sect. 6.

If the gauge mark has been removed, altered or changed, the corporation may reweigh the lighter, and, if the tonnage is more than marked, the owner to forfeit 5l. Sect. 7.

The *Trinity* company to find lighters to take ballaſt from ſhips, within three days after notice from the maſter, unleſs froſty or tempeſtuous weather, on forfeiture of 50l. Sect. 8.

The owner or maſter to pay 6d. *per* ton to the company for lighterage. Sect. 9.

The maſter to forfeit 5l. for unloading any ballaſt below high-water mark; and 40s. to be paid by any perſon throwing any dirt, rubbiſh, aſhes, &c. from any wharf, quay, or bank, or from any barge or lighter. Sect. 10, 11.

Of

Of *Pilots*, *Lodeſmen*, or *Locmen*.

BY theſe different denominations are ſignified the ſame officer, whoſe buſineſs it is to conduct any veſſel or ſhip into a road or harbour, over bars or ſands, or through intricate and dangerous channels, being occaſionally called in to the maſter's aſſiſtance when ſailing as above, or by unknown ſhores, and diffident of his own ſkill and judgment; though in many parts, where the approach or entrance to harbours, &c. are hazardous and difficult, the taking a pilot is not a voluntary act, but obligatory on the maſter, otherwiſe, in caſe of a loſs, he muſt make it good; and the following laws are now in force concerning them in *England*. After a pilot is taken on board, the maſter has no longer any command of the ſhip, till ſhe is ſafe in harbour; but then the maſter reſumes the government of the ſame, and is to ſee to her bed and lying; the pilot being no longer liable, though for his own convenience he may ſtill be on board. The ſame rule holds good, if a pilot goes on board only to conduct a ſhip through ſome dangerous place, as for inſtance, *Yarmouth Roads*; after paſſing them, the maſter muſt reſume the command, and the pilot is no longer reſponſible. Yet it may happen, that the pilot ſhall continue on board, the remainder of the voyage; for example, he may want to go to *Newcaſtle*; but he is only to be conſidered as a common paſſenger, after he has conducted the ſhip through the hazardous paſſage, for which purpoſe he came on board, neither can he charge any wages, ſalary, or fee, though he ſhould keep the helm during the whole voyage, except for the duty done in paſſing the roads.

If a maſter of a ſhip finds himſelf in tempeſtuous weather, in any reputed dangerous place, uſually denominated *Pilot's* water, and a pilot offers to come on board, which offer he refuſes to accept; the maſter in ſuch caſes is liable to his owners, freighters, or inſurers, for the damage or loſs of ſhip and cargo, if either happen in his attempting the paſſage without a pilot.

The maſter of an Engliſh collier is held by the Flemings and the Dutch to be pilot ſufficient to conduct his ſhip from Newcaſtle to their ports; accordingly, in the caſe of a ſhip freighted at Shields by a Flemiſh merchant at *Oſtend* with coals for that port, he refuſed to allow the charge of a pilot: The affair was referred to arbitration, the Britiſh Vice Conſul *Mortimore*, being one of the arbitrators; when it appeared, that the ſhip was driven by ſtreſs of weather into *Yarmouth Roads* which are *Pilot's* water, and a pilot offering his ſervice, he accepted him. Had he done otherwiſe, he would have been anſwerable to his owners for the ſhip if it had been loſt, and to the freighter for his coals; it was therefore decided, that the freighter was bound to allow the pilotage. Pilotage is allowed in moſt *Charterparties*, but not in thoſe made for colliers in *England*.

If any perſon ſhall take upon him to conduct or pilot any ſhip, by or from *Dover*, *Deal*, or the iſle of *Thanet*, to any place on the river *Thames* or *Medway*, before he has been firſt examined by the maſter and wardens of the ſociety or fellowſhip of pilots, of the *Trinity Houſe* of *Dover*, *Deal*, and the iſle of *Thanet*, touching his ability, and approved and admitted into the ſaid ſociety, at a court of loadmanage, by the lord warden of the *Cinque Ports*, or his deputy, and the maſter and wardens; ſuch perſon for the firſt offence ſhall forfeit 10l. for the ſecond 20l. and for every other offence 40l. &c. 3 *Geo.* I. C. 13. S. 1.

This act ſhall not prevent the maſter or mate of any ſhip, or part owner, reſiding at *Dover*, *Deal*, or the iſle of *Thanet*, from piloting his own ſhip; nor ſubject any perſon to the penalties, who ſhall be hired by any maſter to pilot his veſſel, provided none of the ſociety, within one hour after ſuch ſhip ſhall arrive at any of the ſaid places, be ready to pilot the ſame. Ditto, S. 2.

Maſters of merchants ſhips may make choice of ſuch pilot of the ſociety, as they ſhall think fit; and no perſon ſhall continue in the ſociety, who ſhall not pilot a ſhip, at leaſt twice in one year (unleſs prevented by ſickneſs) to, and from, the places abovementioned. Ditto, S. 3.

For

For conducting any ſhip, from *Dover*, *Deal*, or the iſle of *Thanet*, to any places on the river *Thames* and *Medway*, the following, and no greater, prices ſhall be taken, *viz.* For every ſhip drawing ſeven feet water 3l. 10s. eight feet 4l. nine feet 4l. 10s. ten feet 5l. eleven feet 5l. 10s. twelve feet 6l. thirteen feet 6l. 10s. fourteen feet 7l. fifteen feet 7l. 10s. ſixteen feet 8l. ſeventeen feet 8l. 10s. and no allowance to be made for odd inches. 3 *Geo.* I. C. 13. S. 4.

If any pilot ſhall negligently loſe the ſhip under his care, and be thereof convicted, he ſhall for ever be incapacitated for acting as a pilot; and the number of ſuch pilots ſhall not be leſs than an hundred and twenty, whoſe names, ages, and places of abode, ſhall, every 25th of *March*, be affixed in ſome publick place at the cuſtomhouſes at *London* and *Dover*, and for not returning ſuch liſt, the maſter and wardens of the ſociety ſhall forfeit 10l. &c. Ditto, S. 5.

This act ſhall not hinder any perſon from aſſiſting a ſhip in diſtreſs. Ditto, S. 7.

The maſter and ſuch two wardens of the ſociety, as ſhall be appointed to examine any perſon on his being admitted a pilot, ſhall take the following oath, to be given by the regiſter of the court of loadmanage, *viz.* Ditto, S. 8.

I A. B. *do ſwear, that I will impartially examine, and enquire into the capacity and ſkill of* in the art of pilotage over *the* Flats, *and round the* Long Sand Head, *and the coaſts of* Flanders *and* Holland, *and will make true and ſpeedy return thereof to the lord warden of the Cinque Ports, for the time being, or his deputy, without favour, affection, fee or reward.*

So help me God.

This act ſhall not extend to the taking away any liberties veſted in the corporation of the *Trinity Houſe* of *Deptford Strond*. Ditto, S. 9.

This act ſhall be a publick act, and ſhall continue ſeven years, &c. Ditto, S. 10.

Continued by 8 Geo. II. Cap. 21. *to* 25 March, 1749, &c. *Further continued until* 25 March, 1764; *and from thence to the end of the then next ſeſſion of parliament, by* 23 Geo. II. *p.* 485.

The lord warden of the *Cinque Ports*, or his deputy, with the aſſent of the commiſſioners of loadmanage, and of the maſters and wardens of the ſociety of pilots of the *Trinity Houſe* of the *Cinque Ports*, at the court of loadmanage, may, during the continuance of 3 *Geo.* I. Cap. 13. make rules and orders for the better government and regulation of the pilots reſiding at *Dover*, *Deal*, and the iſle of *Thanet*, and may order a ſufficient number of them, not leſs than eighteen, to ply conſtantly at ſea, to be ready to conduct ſhips up the rivers of *Thames* and *Medway*; and the lord warden, &c. at a court of loadmanage, may ſuſpend or deprive any of the ſaid pilots, for breaking the ſaid rules or orders; and if any pilot, during ſuch ſuſpenſion or deprivation, ſhall take upon himſelf to conduct any ſhip, by, or from *Dover*, *Deal*, or the iſle of *Thanet*, to any place upon the river *Thames* or *Medway*, he ſhall be liable to all penalties provided by the ſaid act againſt ſuch perſons as ſhall conduct ſhips from and to the places aforeſaid, without being firſt examined and approved of by the maſter and wardens of the ſaid ſociety. 7 *Geo.* I. C. 21. S. 14.

Continued as the preceding act of 3 Geo. I. *Cap.* 13. *by* 8 Geo. II. *Cap.* 21. *to* 25 March, 1749. *And further continued to* 25 March, 1764, *by* 23 Geo. II. *p.* 485.

If any perſon ſhall take the charge of any ſhip as pilot, down the river of *Thames*, or through the *North Channel*, to, or by *Orfordneſs*, or round the *Long Sand Head*, into the *Downs*, or down the *South Channel* into the *Downs*, or from or by *Orfordneſs* upon the *North Channel*, or the river of *Thames*, or the river *Medway*, other than ſuch as ſhall be licenced to act as a pilot, by the maſter, wardens, and aſſiſtants of the *Trinity Houſe* of *Deptford Strond*, under the common ſeal of the corporation; every perſon ſo offending, and being convicted before two juſtices of the peace for the city of *London*, or the counties of *Middleſex*, *Eſſex*, *Kent*, or *Surry*, ſhall, for every offence, forfeit 20l. provided that nothing in this act ſhall extend to the obliging any maſter of any ſhip in the coal trade or coaſting trade, to employ a pilot. 5 *Geo.* II. C. 20. S. 1.

The pilots already admitted by the ſaid corporation ſhall be ſubject to the regulations of the corporation, provided the regulations do not relate to the pilots keeping of,

turns,

turns, or to the ſettling the rates of pilotage; and ſhall pay the ancient dues, provided the ſame do not exceed one ſhilling in the pound out of their pilotage, for the uſe of the poor of the corporation, within ten days after the ſervice of ſuch pilots ſhall be ended. 5 *Geo.* II. C. 20. S. 8.

In caſe ſuch pilots ſhall refuſe to take the charge of any of his majeſty's ſhips, when appointed thereto by the ſaid corporation, or ſhall have miſbehaved themſelves in the conduct of any ſhips, or in any other part of their duty; or if pilots ſhall refuſe to obey any ſummons of the corporation, or ſuch orders as the corporation ſhall make in the premiſes, the general court of the ſaid corporation, upon examination thereof, are required to recal the warrants granted to ſuch pilots; and if ſuch perſon ſhall (after notice given by the clerk of the ſaid corporation to them in perſon, or left at their place of abode) act as pilots within the limits aforementioned, they ſhall be ſubject to all the penalties inflicted on unlicenſed pilots. Ditto, S. 9.

Nothing in this act ſhall extend to the impeaching of any privileges enjoyed by the pilots of the *Trinity Houſe* of *Kingſton upon Hull*, or the *Trinity Houſe* of *Newcaſtle upon Tyne*. Ditto, S. 11.

This act ſhall not extend to the impeaching any of the franchiſes, nor to take away the ſole right of piloting merchant ſhips, from or by *Dover*, *Deal*, and the iſle of *Thanet*, upon the river *Thames* and *Medway*, granted to the ſociety and fellowſhip of the maſter, wardens, and pilots of the *Trinity Houſe* of *Dover*, *Deal*, and the iſle of *Thanet*, by 3 *Geo.* I. *Cap.* 13. Ditto, S. 12.

This act ſhall be a publick act, &c.

The maſters in the royal navy are the pilots: They have the charge of the ſhip during the whole voyage. The captain directs where he would have the ſhip conducted to, and takes care of himſelf, and with the aſſiſtance of his lieutenants and other officers to make the mariners obey the maſter, but he has nothing to do with the ſteerage. He is reſponſible for the loſs of the ſhip in battle, or if he gives the maſter orders to lay her in a place of danger, contrary to the maſter's advice; but where no ſuch event happens, the maſter is to account for the loſs of the ſhip, by the dangers of the ſea. Ditto, S. 13.

So far the marine laws of *England* are our guide, but as it often happens that diſputes ariſe, for which they have not made any ſpecial proviſions, Britiſh conſuls, whoſe office obliges them to be arbitrators for their countrymen; as well as merchants at home, who are called upon to arbitrate between Britiſh and foreign ſubjects, ſhould be well acquainted with the marine laws of other maritime ſtates, eſpecially ſuch as are held in general eſteem, and are reſpected in the courts of judicature of the kingdoms and ſtates of Europe.

We ſhall begin with the laws of *France*, which however are founded in a great meaſure upon the laws of *Oleron*, inſtituted by *Richard* I. king of *England*, upon his return from the Holy Land about the year 1195; *Richard* at that time having extenſive poſſeſſions in *France*, amongſt others the town of *Oleron* in *Gaſcony*, ſituated on the river *Gave*, belonged to him.

In *France* no one can ſerve as a pilot until he is at leaſt twenty-five years old, and has paſſed a ſtrict examination of his knowledge in the fabrick of ſhips, and concerning the tides, banks, currents, the rocks, and other dangerous parts, in the *Rivers*, *Ports*, and *Havens*, where they are eſtabliſhed. *Dict. de Com. Tom.* 3. P. 965.

They are obliged after they are approved and admitted always to have their boats furniſhed with anchors and with oars, that they may always be in a condition to ſuccour ſhips on their firſt ſignal.

No mariner, that is not admitted a pilot, as above, ſhall offer to conduct any veſſel, except where a licenſed pilot is wanting; and, in this caſe, the maſter of the ſhip may take a fiſherman, though this muſt quit the care of the veſſel to a regular pilot, in caſe ſuch a one offers, before they have paſſed the dangerous parts, and a ſatisfaction ſhall be made the fiſherman for his aſſiſtance out of what would have been due to the pilot, had he taken charge of her from the beginning.

If any pilot is drunk when he offers to engage in his function, he ſhall forfeit 100 ſous, and be ſuſpended for a month.

Ships that are neareſt are to be piloted firſt, under penalty of 25 livres to the pilot, who ſhall prefer one that is more diſtant; and they are equally prohibited to go farther than the roads to meet the ſhips, or to enter them againſt the maſter's liking; nor to quit them until they are anchored and moored in port; and, if it is in going out, not until the ſhip is in open ſea, on penalty of loſing their ſtipend, and being mulct in 30 livres.

For the veſſel's ſecurity, and the pilot's diſcharge, the maſter ſhall declare what water the ſhip draws, on pain of forfeiting to the pilot 25 livres for every foot he conceals.

Pilots muſt not exact more for their aſſiſtance than what is regulated by their officers, and contained in the tariffs in the regiſter office, and fixed upon the key, excepting in caſes of ſtorms, and evident danger, when it ſhall be ſettled by the arbitration of the ordinary officers, with the intervention and advice of two merchants.

The marine ordinances declare all promiſes void, that are made to pilots under the apprehenſion of a ſhipwreck.

The pilot, who through ignorance ſtrands a veſſel, ſhall pay 100 livres, or, if incapable, ſhall be whipt, and be for ever deprived of exerciſing his function again. And he who maliciouſly runs a ſhip a ſhore ſhall ſuffer death, and his corpſe be fixed to a maſt near the place of the wreck.

Is is likewiſe the obligation of the pilots to ſee that the buoys and ſea marks are well placed, and to examine whether there be no alteration in the ordinary depths and paſſages, that they may give advice to their officers, or to the maſter of the key or port.

As for the port it is free to all maſters and captains, as well *French* as foreigners, to take thoſe pilots they like beſt, without being obliged at their going out to make uſe of thoſe that brought them in.

By the ſea laws of *Whiſbuy*, in the iſle of *Gothland* (formerly the emporium of the North, and the reſidence of merchants of every nation towards the cloſe of the twelfth century, when their marine laws were ſubmitted to, and paſſed for juſt on all the coaſts of *Europe* from *Muſcovy* to the *Mediterranean)* when a ſhip comes to a harbour or river, and the maſter doth not know the coaſt, nor the river, he ought to take a pilot of that country to carry her up the river or harbour; which pilot ſhall be maintained by the maſter and paid by the merchant: Alſo, if it is thought convenient in any river, or off any dangerous coaſt, to take on board a pilot of the country, though the merchant oppoſes it, if the maſter, the ſhip's pilot, and the major part of the ſeamen are for it, he may be hired, and ſhall be paid by the ſhip and cargo, as averages are calculated for goods thrown overboard, *Leg. Wiſb. art.* 44. and 60. And by the ordinances of *Koniſburgh*, if a maſter in this caſe is obliged to pay exorbitant pilotage, it ſhall be made good by the ſhip and cargo as *groſs average*. The ordinary pilotage comes within common average.

In *Holland* the regulation of pilots is ſuitable to the other equitable marine inſtitutions of that republick; as the pilot's pay varies in the different provinces of that ſtate, and our extenſive *commerce* with it renders a continual uſe of them neceſſary, I ſhall give my reader an account of that part of their laws which I think may be of ſervice, and merit his regard, in as brief a manner as the importance of the ſubject to all that are, or may be, concerned in the *Dutch* trade will permit, without curtailing any thing I ſhall deem requiſite for their information.

The States of *Holland* and *Weſt-Frieze*, in their ordinance about the pilots of *Huyſduynen*, *Petten*, *Calans-ogg*, *Texel*, and the neighbouring parts, order *That*

No one ſhall be admitted as a pilot, who is not ſtrong and robuſt, not leſs than twenty-five or above ſixty years of age, who ſhall have ſailed at leaſt four years in the openings of that country, and have an entire knowledge of the currents of the *Texel*, and he ſhall then have a mark given him of his admittance. *Ordonnance des Etats de Holland, &c.* du 15 de *Sept.* 1685. Art. 1, 2.

To prevent all diſputes, the governors or ſteerſmen of the pilot boats may put aboard the veſſel that wants one, ſuch ſworn pilot as he thinks moſt capable, without any hindrance from the others, under penalty of 6 florins, except the maſter elects any other than him propoſed. Art. 3.

No

No other pilots but thoſe who have been examined and authoriſed as aforeſaid, and have received the badge of their office (which they are to ſhow, as well as this preſent ordinance to all commanders before they undertake to conduct them either in or out, under penalty of forfeiting 24 florins for each offence) ſhall dare to undertake the charge of any ſhip going out or coming in, &c. Art. 6.

The pilots are obliged to conduct the ſhips, as far as on this ſide the *Vlaak*, and if the captains deſire to be piloted farther, the pilots may not refuſe, though thereby they are detained, one, two, or three days extraordinary aboard; they ſhall have 6 florins beſides their common pay, if the ſhip is only in ballaſt, or 9 florins if ſhe is loaded, provided that all foreign ſhips (except only thoſe which bring oxen) pay 9 florins, if empty, and 13 florins 10 ſtivers, if laden; and, if a pilot remains aboard more than the ſaid three days, he ſhall have 40 ſtivers a day, beſides his ordinary ſalary, the ſame as the pilots of *Vlieland* and of *Ter Schelling* have, according to the fifth article of their ordinance; but when in winter, a pilot has conducted a ſhip into a good road, free from the danger of the ice, and remains there two or three days, the pilotage is earned, and it ſhall be free to the captain to detain the pilot on board paying him 40 ſtivers *per* day. If it happens that a pilot having conducted the veſſel on this ſide the *Vlaak*, and the maſter cannot pay him, either for want of money, or otherwiſe, ſo that the pilot is obliged to come up with the ſhip to the place deſigned, the maſter ſhall give him twelve florins beſides his pilotage, and may for this make uſe of him until their arrival; but, if the pilot is accidentally detained through want of a boat, &c. to put him aſhore, in ſuch caſe, the maſter is not obliged to pay him any more than his pilotage. Art. 7.

All pilots ſhall be obliged to board the ſhips at a league without the *ſhallows* or *flats*, and thoſe which ſhall not enter them but on this ſide the firſt buoy ſhall only have half pilotage. Art. 8.

All ſhips and gallies which come from the weſt, from the *Levant*, from *Barbary*, *Genoa*, the *Canaries*, from *Spain*, *France*, *England*, *Muſcovy*, *Greenland*, *Denmark*, *Sweden*, *Koningſberg*, *Dantzick*, *Bergen*, *Dronthiem*, *Nileus*, *Hambourg*, and other places in their neighbourhood, as alſo the galliots, or other veſſels, laden with charcoal, of whatſoever nation they are, as well foreigners as natives, who will enter the *Texel*, ſhall be obliged to take pilots, and to pay them on the footing of the preſent ordinance, when they come to offer themſelves without the buoys, provided that the veſſels from the north ſhall pay 24 ſtivers the foot to *Nieuws*, *Diep*, and 24 ſtivers the foot to this ſide of the *Vlaak*, and that they are free in the road of the merchants, or *Kooprwarders Reed*. The veſſels coming from *Normer*, *Dronthiem*, and *Romſdaal*, with bale goods, iron, fiſh, oil, and other commodities, ſhall pay as much as thoſe from the *Baltick*, without exception: But the galliots or ſmacks coming from *l'Eyder*, *Jutland*, or *Norway* either in ballaſt or laden with cattle, ſhall pay 15 ſtivers the foot, if the pilots go aboard them beyond the openings, and the pilots may leave them when they have conducted them into the road of the merchants; but if a pilot quits his ſhip before bringing her into the ſaid roads, he ſhall forfeit 12 florins; and, if the captain will be piloted on this ſide the *Vlaak*, he ſhall augment the pilot's ſalary 5 ſtivers *per* foot, paying 20 inſtead of 15. And if the captain refuſes to pay the pilot, this latter may follow him to his deſtined port, to recover his ſalary, and the charges occaſioned him, for which charges he ſhall be allowed 12 florins; the veſſels, which have a third of their loading, ſhall pay as is ordered in the 24th article, and all that is taken in with the tackel, or that is laden in a ſhip from hand to hand, whether it be oils, bales, ſacks, caſks, lead, &c. ſhall be reputed merchandize, except all ſorts of wood, which ſhall not be eſteemed ſuch. Art. 9.

The pilots ſhall be obliged to go and come once a month through the openings to ſound the depths, exactly, to viſit the banks and ſhores, and nicely to examine the buoys and their ropes, to ſee that they are not worn out, and whether the ſhallows are any thing altered, which they ſhall be alſo obliged to do, as often as there ſhall happen tempeſtuous bad weather; and, if they perceive any change in the ſhallows, banks, or elſewhere, they ſhall be obliged immediately to declare it to the lords commiſſioners, that they may immediately remedy it. Art. 10.

And if it happens that the pilot runs the ſhip aſhore, whether through villainy, diſaſter, inadvertency, or imprudence, the commiſſioners ſhall take cognizance of it, and puniſh

puniſh him according to the exigence of the caſe, either by ſuſpenſion, diſcharging, baniſhing, or by a greater puniſhment, even with death; but if it happens through an extraordinary caſualty, as by an unforeſeen miſchance of a ſudden change of wind, or of the current, or other ſimilar accidents, the penalty ſhall be moderated by the commiſſioners, as they ſhall think juſt; ordering to this effect the reſpective officers to inform themſelves exactly, of what has paſſed, and to ſend their declarations to the commiſſioners, as alſo, if the caſe require it, to ſeize the pilot, and proceed againſt him according to what he has done. Art. 11.

Ships or other veſſels ſhall pay for piloting out, *viz.*

Thoſe that draw { 10 Feet Water — 8 Stivers, *Pence*, / 11 D° — 9 D° / 12 D° — 10 D° } the Foot.

And thoſe that draw above twelve feet water ſhall pay 12 ſtivers the foot. Art. 16.

And in caſe of refuſing payment, the pilot, on the ſhip's return, may purſue the captain to the place he is bound to, to recover his due, with charges, for which he ſhall be allowed 12 florins; but the veſſels going to the north are excluded; and thoſe which have a third or more of their cargo, ſhall pay pilotage as follows:

Thoſe that draw from

7 to 8	Feet Water	*F.* 6		14½	Feet Water	*F.* 18	
8½		6	10	15		20	
9		7		15½		22	10
9½		7	10	16		25	
10		8		16½		27	10
10½		9		17		30	
11		10		17½		35	
11½		11		18		40	
12		12		18½		44	
12½		13		19		48	
13		14		19½		53	
13½		15		20		58	
14		16					

thoſe that draw more feet water, ſhall pay for every ſurplus foot 12 florins, and 6 florins for each half foot, but nothing for the quarter of a foot.

And every pilot ſhall be obliged to abide aboard till the ſhip is got without, and ſhall not undertake to carry out another till he has conducted the firſt into open ſea, on penalty of 12 florins mulct, and ſuſpenſion of twelve weeks; and when the wind is fair for getting out, the pilot's boat muſt not take any one to carry aboard, but the captain of the ſhip which the pilot is going to take under his care, on forfeiture of 8 florins; but if it happens that ſome other captain go in the ſame boat, they ſhall be obliged each of them to carry a pilot with them, to conduct their ſhips abroad, if they do not declare that their pilot is left aboard, and tell their name and ſurname; on penalty to the boatman or pilot who undertakes it (be it through malice, ignorance, or contempt of the laws) of 9 florins, for each captain that he has carried aboard without a pilot, and ſhall be obliged on his return aſhore, to declare to the officer the names of the captains that he has carried aboard, and that of the pilots, as above, on penalty of 18 florins. Art. 17.

When the pilots arrive on board, they ſhall immediately demand of the captain or mate how much water the ſhip draws, which they ſhall be obliged to declare without reſerve, on pain of forfeiting ſixteen florins. Art. 18.

The

The following pilotage ſhall be paid for the entrance of ſhips, according to the feet they draw of water counting by feet and half feet, which the captains ſhall be obliged to pay, except thoſe which come from the North, as in the 9th Article, *viz.* in *Summer*, to commence from the 1ſt of *April* to the 1ſt of *September*, to be counted from the day that the ſhip paſſes the *Vlaak*, and not from the day that ſhe ſhall be got in. Art. 19, 20.

For every Ship or Veſſel that draws

7, 8, 9, to 10	Feet Water	F. 12		15½	Feet Water	F. 36	
10½		13	10	16		40	
11		15		16½		47	10
11½		16	10	17		55	
12		18		17½		63	10
12½		19		18		72	
13		20		18½		81	
13½		23		19		90	
14		26		19½		100	
14½		29		20		110	
15		32					

In Winter, *to begin from the 1ſt of* September *to the laſt Day of* March. Art. 21.

7, 8, 9, to 10	Feet Water	F. 18		15½	Feet Water	F. 48	10
10½		19	10	16		54	
11		21		16½		63	
11½		22	10	17		72	
12		24		17½		82	
12½		26		18		92	
13		28		18½		103	10
13½		31		19		115	
14		34		19½		127	10
14½		38	10	20		140	
15		43					

And every veſſel that draws more than twenty feet water, ſhall pay for every foot over, 25 florins, though only feet and half feet ſhould be paid for, without reckoning any thing for the quarter of a foot, under penalty of 20 florins. Art. 22.

All veſſels coming from the *Levant*, *Barbary*, the *Canaries*, from *Spain*, *France*, *England*, *Muſcovy*, and all other parts, as in the 9th Art. with a third or more, of their lading, ſhall be deemed as full, and ſhall pay 3 florins inſtead of 2, provided that the reſt of their cargo conſiſts only in ſalt, or in common goods; and the veſſels which ſhall not have a third of their lading, ſhall pay according to the preceding regulations, made in this ordinance. Art. 24.

All ſhips coming from Guinea *ſhall pay,*

Drawing 8	Feet Water -	F. 20		14½	Feet Water -	F. 58	
8½		21	10	15		65	
9		23		15½		73	
9½		25		16		81	
10		27		16½		94	10
10½		29	10	17		108	
11		32		17½		123	
11½		34		18		138	
12		36		18½		155	
12½		39		19		172	
13		42		19½		191	
13½		46	10	20		210	
14		51					

This

This being the tax of pilotage during winter; and ſhips coming from *America*, from *Brazil*, or neighbouring coaſts, half laden, ſhall pay as thoſe which come from *Guinea*; but thoſe which ſhall come from *America*, or from the *Streights* with ſalt, ſhall only pay as other ſhips laden with ſalt, according to the preſent ordinance.

Provided, that the pilots who ſhall bring in any ſhips in a great ſtorm, or ſuch as are without anchors, maſts, cables, or rudder, ſhall have, beſides their ordinary hire, as much as the commiſſary, or the arbitrators which he ſhall have eſtabliſhed, think proper to adjudge. Art. 26.

And all pilots ſhall be likewiſe obliged to carry all ſhips and captains out to ſea, whenever they are required, and this on reaſonable terms; and no pilot ſhall undertake to carry out more than one ſhip at a time, under penalty of 25 florins and ſuſpenſion of ſix weeks: Neither is it permitted to any pilot who has undertaken to conduct a ſhip out, to reſign her to another, under pain of 6 florins mulct, but if any ſuch pilot happens to fall ſick, the captain may take any other he pleaſes. Art. 27.

When pilots are to carry out, or bring in ſhips, they cannot oblige captains to take more than one, nor charge him for any damage that their boat may have ſuffered in going aboard, or before the ſhip, on pennlty of 25 florins, unleſs that it be by expreſs order of the captain, in which caſe he muſt produce proofs of the ſaid order; in want of which, he ſhall not be allowed more than a common pilotage. Art. 28.

And in caſe that a ſhip appears either by night or by day, without meeting with any pilot, and her company deſire any fiſherman (not admitted to the function) to conduct her in, the fiſherman is obliged to declare to the captain that he is no ſworn pilot: In the mean time, he may enter the ſhip, and undertake to bring her in; but if afterwards, it happens that a pilot comes aboard to offer his ſervice, he ſhall be preferred, and the fiſherman obliged to quit her, except he agrees with the pilot that they ſhare the pilotage between them, which ſhall be at the election of one and the other. Art. 30.

But if the fiſherman has once brought the ſhip within the firſt buoy, before the ſworn pilot got on board, the fiſherman ſhall not be obliged to abandon her, nor to yield up the moiety of the pilotage. Art. 31.

Item, all ſhips being in danger, their captains may demand and take two pilots, paying a double reward; but, if there remains more than one pilot aboard without the captain's order, thoſe that remain unordered ſhall have nothing to pretend to but what the captain pleaſes to give them freely, as he ſhall think proper. Art. 32.

When a pilot has brought in a ſhip, and received his ſalary, he ſhall be obliged to give the captain an acquittance, which ſhall contain the number of feet the ſhip draws, and the ſum he has received; which acquittance he ſhall ſign or mark, and the captain ſhall be obliged to demand one, upon which to reimburſe himſelf the pilotage from the merchants, in want whereof theſe latter ſhall not be obligated to pay him any thing; and beſides this, the captain and the pilot ſhall forfeit 6 florins each. Art. 33.

We forbid every one, whoſoever he be, to inſult, abuſe, or injure any of the pilots admitted and ſworn, either in the ſtreets, at the water-ſide, in the public or private houſes, or to deride them for their employments, on penalty of 6 florins for the firſt time; 12 florins, and an arbitrary correction for the ſecond; 18 florins and baniſhment for two years for the third. Art. 35.

If it happens that any ſhip is forced to enter by the openings to anchor, either by a contrary wind or otherwiſe, and would go out again, ſhe ſhall pay 15 ſtivers *per* foot pilotage; but ſuch as would be conducted within the *Vlaak* ſhall pay full pilotage; and if the pilot has brought the ſhip ſafely into the *Amelander Diep*, either by the captain's order, or conſtrained thereto by bad weather, the pilot ſhall be obliged to remain on board, at the will of the captain, until a proper ſeaſon offers for getting out, and the pilot ſhall have ſix florins, once for all, for his time, beſides his victuals. Art. 36.

If any captain deſires his ſhip to be conducted in the *Balg* the pilots ſhall be obliged to carry them for 20 ſtivers the foot, for which the ſaid pilots are to convey the ſhips as far into the *Balg* as the captains pleaſe, and as a great number of boats or barges are commonly employed in going before large ſhips, to ſound the coaſt for their ſecurity, there ſhall be paid for each boat, whether they have one or more men in them, the two-thirds of the ſalary of one florin *per* foot, provided the ſaid boats ſhall have a third more, for ſhips laden with merchandizes in the article 24; the whole, without any diſpute, on penalty of 12 florins, beſides the pilotage; and it is to be underſtood, that

when

when a ſhip in winter, or in the icy ſeaſons, ſhall have been conducted into the *Balg*, by order or conſent of the captain, or his mate, the pilotage ſhall be earned, and afterwards a half pilotage ſhall be paid for carrying the veſſel from the *Balg* to the *Vlaak*.—Art. 37.

Ships which return from the *Eaſt*, from *Norway*, and the adjacent parts, although they had taken and hired a pilot, on going, even with the conſent of the commiſſary, they ſhall nevertheleſs be obliged, on their arrival before the place, to take another to conduct them through the openings, and to pay him the pilotage upon the footing of this preſent ordinance, the which pilotage ſhall be parted between the two pilots; and him that ſhall have been taken to bring the ſhip ſhall be free, after he has brought the ſhip in the road of the merchants, or *Koopwarders Reed*. Art. 39.

Each pilot boat, or galliot, ſhall carry a white vane or weather flag at the top of the maſt in which may plainly be ſeen the number of 1, 2, 3, 4, 5, &c. to the number of boats that there ſhall be, or elſe the number ſhall be marked in large figures of two foot ſquare, with black tar, at the top of each great ſail of the boats: And if a pilot boat paſſes by a ſmall ſhip, without putting a pilot aboard her, with the view of going to a larger the captain may declare it, and in this caſe all the pilots who ſhall have ſo neglected him, ſhall forfeit 25 florins each; and all who ſhall go to ſea without their number marked in their flag, or in their great ſail, ſhall alſo pay 25 florins each, and ſhall be ſuſpended ſix weeks; thoſe who ſhall have found any one in fault, and not declare it to the officer, ſhall pay the ſame mulct. Art. 40.

The STATES, at the time of making the foregoing ordinance, for the pilots of *Huyſduynen*, *Petten*, *Calans-ogg*, *Texel*, and the adjacent parts, made another for the pilots of *Vlieland* and *Ter Schelling*, and the neighbouring territories, differing chiefly from the other in the names of the places, and ſomething in the charges of pilotage, which I ſhall particularly mention. Art. 4.

Every captain of a ſhip that enters by the *Vlie* with a pilot of *Ter Schelling* ſhall be obliged to pay 6 ſtivers every time, more than the ordinary pilotage, for the relief of poor and aged pilots.

The pilots ſhall be obliged to go aboard the ſhips at a league beyond the *Flats*, and thoſe who only embark on this ſide, the firſt, ſecond, third, or fourth buoy, ſhall have no more than 15 inſtead of 20 ſtivers *per* foot; and if any pilot having conducted a ſhip up the *Vlaak*, is detained either by bad weather, or the want of a boat to carry him a ſhore, in this caſe he ſhall have 1 florin *per* foot; but, if in winter time, the ſhip is ſtopped by ice, the pilot ſhall endeavour to carry her into the *Ruys ou Sloot*, and, having ſecured her there, he ſhall remain four days to ſee whether the weather will change, and, if then the ice continues, he has earned his pilotage, and may quit the ſhip, and the captain ſhall pay him 3 florins for his attendance the four days; and, if the captain will detain him yet longer, he ſhall pay 15 ſtivers *per* foot, beſides his proviſions; but if the captain will abſolutely be carried up the *Vlaak*, the days of pay ſhall ceaſe on heaving up the anchor, and the pilot ſhall be obliged to conduct him for 16 ſtivers the foot; and we prohibit all others but ſworn and admitted pilots, to undertake the bringing any ſhip from *Piereveld*, by the opening of the *Vlie*, on penalty of 25 florins. Art. 6.

All veſſels coming from the *Eaſt*, *Weſt*, from *Muſcovy*, and the adjacent parts, as alſo thoſe from *Bergen*, *Dronthiem*, and *Nileus*, and all charcoal veſſels drawing eight feet water, which will enter by the *Vlie*, ſhall be obliged to take a pilot to bring them in, although they have taken *one* at the *Sond*, or elſewhere, without leaving the captains at liberty to refuſe, or to excuſe paying the pilotage; and in caſe of refuſal, the pilots may follow the captains to the places they are bound to, to recover the pilotage and charge of their journey, which ſhall be ſettled at 12 florins, provided that the galliots, or other ſmall veſſels, which draw no more than four, five, and ſix feet water, ſhall pay to the *Sloot* 24 ſtivers the foot, and to this ſide of the *Vlaak*, 34 ſtivers the foot; the ſhips coming from *Normer*, *Dronthiem*, or from *Roomſdaal*, laden with iron, oil, &c. ſhall pay as much as thoſe which come from the *Baltick*, without exception; but the galliots or other veſſels, which only draw ten feet water, or leſs, coming from *l'Eyder*, *Jutland*, or *Norway*, with their ballaſt of ſalt, or laden with beeves, ſhall pay 15 ſtivers *per* foot, if the pilots enter them without the openings, and conduct them to the *Sloot*, where they

may

may quit them: But if a pilot leaves a ſhip before he has brought her to the ſaid place, he ſhall forfeit 12 florins; and, if the captain will keep the pilots till on this ſide the *Vlaak*, they ſhall pay them 5 ſtivers for each foot more than the 15: And, in regard of laden ſhips, it ſhall be regulated, according to the 9th article, except for thoſe who are only in ballaſt, or thoſe which are laden with wood or cattle. Art. 7.

Thoſe veſſels which have one-third of their cargo ſhall pay pilotage, as directed in Art. 16. for the *Texel*; and thoſe coming from the eaſt and north, ſhall pay entrance as underneath, according to the feet they draw, to be counted by feet and half feet; but the galliots or ſmall veſſels coming from the north, which only draw from four to ſix feet, ſhall be exempt, as in the preceding article, viz. in ſummer to commence the 1ſt of *April*, provided the veſſel paſſes the *Vlaak* that day, for afterwards the diſtinction ſhall not be made of the pilotage of the ſummer and winter, but of the day that the ſhip paſſes the *Vlaak*, and not the day of her entrance. Art. 14, 15.

Every Ship or Veſſel which draws

5, 6, 7, 8 to 9 Feet Water	*F.*	12
9½	12	10
10	13	
10½	14	

And the remainder to 20 feet: exactly the ſame as article 20 in the preceding ordinance.

And for the winter's pilotage to commence from the 1ſt of *September*, if the veſſel paſſes the *Vlaak* that day, till the laſt of *March*;

Every Ship or Veſſel which draws

4, 5, 6, 7, 8, to 9 Feet Water	*F.*	18
9½	18	10
10	19	10
10½	20	5

: And the reſt as far as 20 feet, is the ſame as in article 21 of the foregoing ordinance: As are all the other articles which I have omitted here, being only repetitions of the others quoted before; and as moſt of the marine laws in the northern, and other kingdoms where there are any, are taken either from the ſea laws of *Wiſbuy*, or from the Dutch, who have incorporated moſt of the *Wiſbuy* laws, and improved upon them, I ſhall not enlarge further on this ſubject.

Of *Wrecks*, *Flotſam*, *Jetſam*, and *Lagan*.

A *WRECK*, (in *Latin*, *Wreccum Maris*, and in *French*, *Wreck de Mer*) ſignifies in our law ſuch goods as, after a ſhipwreck, are caſt upon land by the ſea, and left there within ſome county; for they are not *wrecks* ſo long as they remain at ſea, in the juriſdiction of the admiralty. *Jacob's Law Dictionary*. 2 Inſt. 167. 560. 106. *a*.

Flotſam, is when a ſhip is ſunk, or otherwiſe periſhed, and the goods float upon the ſea. 2 Inſt. 560. 106. *b*.

Jetſam, is when a ſhip is in danger of being loſt, and in order to ſave by lightening her, ſome goods are caſt into the ſea, notwithſtanding which ſhe afterwards periſhes. *Ibid.*

Lagan

Lagan or *Ligan*, are thoſe heavy goods which are caſt into the ſea, before a ſhip is loſt, in order to preſerve them; and that they may be found again (if providence permits) a buoy is generally faſtened to them. *Ibid. Bracton. lib.* 3. *c.* 2.

The king ſhall have *Flotſam*, *Jetſam*, and *Lagan*, when the ſhip periſheth or when the owners of the goods are not known; but when the ſhip does not periſh, *e contra*. *F. N. B.* 122. 46 *E.* III.

A man may have *Flotſam* and *Jetſam* by the king's grant; and may have *Flotſam* within the high and low water-mark by preſcription, as it appears by thoſe of the weſt countries, who preſcribe to have wreck in the ſea, ſo far as they may ſee a *humber* barrel: *Coke* 5 *Part. Fol.* 107. *Coke* 2 Inſt. *Fol.* 167.

By the grant of wreck will paſs *Flotſam*, *Jetſam*, and *Lagan*, when they are caſt upon the land; but, if they are not caſt upon the land, the admiral hath juriſdiction, and not the *common law*, and they cannot be called *wreck*. *Sir Henry Conſtable's* caſe. *Coke* 5 *Part. Fol.* 107.

By the *common law* all *wrecks* belong to the crown, and therefore they are not chargeable with any cuſtoms, becauſe goods coming into the kingdom by *wreck* are not imported by any body, but caſt aſhore by the wind and ſea: But it was uſual to ſeize *wrecks* to the king's uſe, *only* when no owner could be found; and, in that caſe, the property being in no man, it in conſequence belongs to the king, as lord of the *narrow ſeas*. *Bract. lib.* 2. *Cap.* 5.

Though when a man, dog, or cat, eſcapes alive out of any ſhip that is loſt, neither the ſhip, nor any thing therein, ſhall be adjudged *wreck*, but the goods ſhall be ſaved and kept a year and a day by the *ſheriff*, to be reſtored to any perſon who can prove a property in them; and if no body appears to claim in that time, they ſhall be forfeited as *wreck*; the year and day ſhall be accounted from the ſeizure; and, if the owner of the goods dies before the expiration of that term, his executors or adminiſtrators may make proof, though, if the goods are *bona peritura* (periſhable goods) the *ſheriff* may ſell them within the year, taking care he does it to the beſt advantage, and account for their product. *Weſtm.* 1. C. 4. 3 *E.* I. 2 Inſt. 166. 5 Rep. 106.

The owners, claiming a *wreck*, muſt make ſufficient proof of their title within the year and day; and they are to do it by their marks or cockets, by the cuſtom-houſe books, or the teſtimony of reputable men.

Where goods are wrecked on ſhore, and the lord of the manor takes them, having power ſo to do, he ſhall not pay cuſtom, neither by the common law, nor by the ſtatute law; for by the common law ſhipwrecked goods could not be charged with cuſtoms, for the wreck being wholly the king's, he could not have a cuſtom of what was all his own. Neither by ſtatute law, becauſe ſuch wrecked goods cannot be ſaid to be brought into the kingdom as merchandiſe for ſale. Hill. 23 and 24 Car. II.

12 *Ann.* Cap. 18. S. 1. Enacts, that the ſheriffs and juſtices of the peace of every county, or of a city or town, and all mayors, bailiffs, and other head officers of corporations and port towns, near adjoining to the ſea, and all conſtables, tithingmen, and officers of the cuſtoms, in all ſuch places, upon application to them made on behalf of any commander of a ſhip in danger of being ſtranded, or run on ſhore, ſhall command the conſtables near the ſea coaſt where ſuch ſhip ſhall be in danger, to call together as many men as ſhall be neceſſary, to the aſſiſtance, and for the preſervation of ſuch ſhip; and if there ſhall be any ſhips of war, or other ſhips, lying at anchor near the place, the officers of the cuſtoms, and conſtables, &c. are to require the aſſiſtance of the ſuperior officers by their boats, and what hands they can ſpare: and if ſuch officers ſhall refuſe or neglect to aſſiſt, they ſhall be liable to the penalty of 100*l.* to be recovered by the chief officer of the ſhip in diſtreſs.

No perſon ſhall enter into ſuch ſhips in diſtreſs, without leave from the commander or conſtable, &c. and the maſters and conſtables may, by force, repel perſons, who ſhall preſs on board the ſaid ſhips without leave. And if any goods are carried off from any ſuch ſhip, and found on any perſon, if they are not delivered to the owner on demand, ſuch perſon ſhall pay treble the value of the goods, recoverable by the owner in an action at law. Alſo, if any officer of the cuſtoms, or his deputy, abuſe the truſt repoſed in him by this act, and ſhall be convicted thereof, he ſhall forfeit treble damages to the party grieved, and be incapable of any employment in the cuſtoms. Perſons defacing

the marks of any goods on board ſuch ſhip, ſhall make double ſatisfaction, or be ſent to the houſe of correction to hard labour for twelve months.

And for the encouragement of ſuch perſons as ſhall give their aſſiſtance to ſuch ſhips or veſſels ſo in diſtreſs, it is further enacted; that the ſaid collectors of the cuſtoms, and the maſter or commanding officer of any ſhips or veſſels, and all others who ſhall act or be employed in the preſerving any ſuch ſhip or veſſel in diſtreſs, or their cargoes, ſhall, within thirty days after the ſervice performed, be paid a reaſonable reward for the ſame, by the commander, maſter, or other ſuperior officer, mariners, or owners of the ſhip or veſſel ſo in diſtreſs, or by the merchant, whoſe ſhip, veſſel, or goods ſhall be ſo ſaved. In default, the ſhip or goods may be detained by the officer of the cuſtoms or his deputy, till all the perſons employed in the ſaving the ſaid ſhip or cargo, ſhall be reaſonably gratified for their aſſiſtance and trouble, or good ſecurity to the ſatisfaction of all parties ſhall be given for the payment thereof. If any difference ariſes touching the gratuities deſerved by any of the perſons ſo employed, the ſaid maſter or merchant, and alſo the ſaid officer of the cuſtoms, ſhall nominate three juſtices of the peace in the neighbourhood, who ſhall thereupon adjuſt the *quantum* of the monies or gratuities to be paid to the ſeveral perſons acting or being employed in the ſalvage of the ſaid ſhip, veſſel, or goods, and ſuch adjuſtments ſhall be binding to all parties, and ſhall be recoverable in an action at law to be brought in any of her majeſty's courts of record. If no owner appears to claim the goods ſaved, they ſhall be put into the cuſtody of the chief officer of the cuſtoms, and if not claimed in twelve months he ſhall ſell them by public ſale, and tranſmit the amount to her majeſty's exchequer, there to remain for the uſe of the owners. This act ſhall be read four times in the year, in all the pariſh churches and chapels of every ſea-port town, and upon the ſea coaſt in this kingdom, viz. upon the *Sunday* next before *Michaelmas-day*, *Chriſtmas-day*, *Lady-day*, and *Midſummer-day*, in the morning immediately after prayers, and before the ſermon. 12 *Ann.* Cap. 18. S. 2.

If any perſon or perſons ſhall make, or be aſſiſting in the making, any hole in the bottom, ſide or any other part of any ſhip or veſſel ſo in diſtreſs as aforeſaid, or ſhall ſteal any pump belonging to any ſuch ſhip or veſſel, or ſhall be aiding or abetting in the ſtealing ſuch pump, or ſhall wilfully do any thing tending to the immediate loſs and deſtruction of ſuch ſhip or veſſel, ſuch perſon or perſons ſhall be, and are hereby made guilty of felony, without any benefit of his, her, or their clergy. This act was made perpetual by 4 *Geo.* I. c. 12.

For the effectual preventing the wilful caſting away, burning, or otherwiſe deſtroying of ſhips, by the owners, maſters, and mariners thereof, and thereto belonging; it is enacted, that if any owner of, or captain, maſter, mariner, or other officer belonging to any ſhip, ſhall wilfully caſt away, burn, or otherwiſe deſtroy the ſhip of which he is owner, or unto which he belongeth, or in any manner direct or procure the ſame to be done, to the prejudice of any perſon or perſons that ſhall underwrite any policy or policies of inſurance thereon, or of any merchant or merchants that ſhall load goods thereon, he ſhall ſuffer death. And the 11th of *Geo.* I. Cap. 19. Sect. 76. after reciting the above clauſe, and mentioning that doubts have ariſen about the trial and puniſhment for the ſaid offences, enacts, that if the ſaid offences are committed within the body of any county in the realm, they ſhall be tried in the ſame courts in ſuch manner and form as other felonies are tried and determined; and if the ſaid offences are committed upon the high ſeas, they ſhall be tried and adjudged by the admiralty court.—4 *Geo.* I. C. 12. Sect. 3.

If a man has a grant of *wreck*, and goods are *wrecked* upon his lands, and another taketh them away before ſeizure, he may bring an action of treſpaſs, &c. for before they are ſeized, there is no property gained to make it felony. 1 *Hawk.* P. C. 94.

If goods *wrecked* are ſeized by perſons having no authority, the owner may have his action againſt them; or if the wrong-doers are unknown he may have a commiſſion to inquire, &c. 2 Inſt. 166.

Goods loſt by tempeſt, piracy, &c. and not by *wreck*, if they afterwards come to land ſhall be reſtored to the owner. 27 *Ed.* III. C. 13.

When a ſhip is ready to ſink, and all the men therein, for the preſervation of their lives, quit the ſhip, and afterwards ſhe periſhes, if any of the men are ſaved and come to land, the goods are not loſt. *Coke* 2 Inſt. 167.

A ſhip

A ſhip on the ſea was chaſed by an enemy; and the men therein, for the ſecurity of their lives, forſook her; ſhe was afterwards taken by the enemy, and ſpoiled of her goods and tackle, and then turned adrift; after this, by ſtreſs of weather, ſhe was caſt on land, where it happened her men ſafely arrived: And it was reſolved that this was no *wreck*.

The act, 12 *Ann.* St. 2. Cap. 18. ſhall not affect the ancient juriſdiction of the admiralty court of the *Cinque Ports*, but the officers of the ſaid court ſhall put the ſaid act in execution, within the juriſdiction of the *Cinque Ports*. 4 *Geo.* I. Cap. 12. S. 2.

In the year 1753, *the following act paſſed, which having reduced the greateſt part of the former laws into this act, for the guidance of maſters of ſhips and other perſons concerned in ſhipping, it is here inſerted.*

The preamble begins that, Whereas, notwithſtanding the good and ſalutary laws now in being, againſt plundering and deſtroying veſſels in diſtreſs, and againſt taking away ſhipwrecked, loſt or ſtranded goods, many wicked enormities have been committed, to the diſgrace of the nation, and to the grievous damage of merchants and mariners, of our own and other countries: *Be it enacted*, That if any perſon or perſons, ſhall plunder, ſteal, take away, or deſtroy any goods or merchandiſe, or other effects from, or belonging to, any ſhip or veſſel which ſhall be in diſtreſs, or ſhall be wrecked, loſt, ſtranded, or caſt on ſhore, in any part of his majeſty's dominions (whether any living creature be on board or not) or any of the furniture, tackle, apparel, proviſion, or any part of ſuch ſhip or veſſel; or ſhall bear, or wound, with intent to kill or deſtroy, or ſhall otherwiſe wilfully obſtruct the eſcape of any perſon endeavouring to ſave his or her life, from ſuch ſhip or veſſel, or the wreck thereof; or, if any perſon or perſons ſhall put out any falſe light or lights, with intention to bring any ſhip or veſſel into danger, then ſuch perſon or perſons ſo offending, ſhall be deemed guilty of felony, and being lawfully convicted thereof, ſhall ſuffer death, as in caſes of felony, without benefit of clergy. 26 *Geo.* II.

Provided, that when goods of ſmall value ſhall be caſt on ſhore, and ſtolen without circumſtances of cruelty or violence, the offender on conviction, be puniſhed as in caſes of petit larceny

It ſhall be lawful for any juſtice of the peace, upon information being made to him on oath, of any part of the cargo, or effects of any ſhip, loſt or ſtranded, being unlawfully carried away, and concealed, to iſſue his warrant for ſearching any houſe, &c. as in other caſes of ſtolen goods: And, if the ſame ſhall be found in ſuch houſe, &c. or in the poſſeſſion of any perſon not legally authoriſed to keep the ſame, and the owner of ſuch houſe, or the perſon in whoſe cuſtody the ſame ſhall be found, ſhall not give an account to the ſatisfaction of the juſtice of the peace, how he came by the goods, it ſhall be lawful upon proof of ſuch refuſal, and he is required, to commit the offender to the common gaol for ſix months, or until he ſhall have paid the owner treble the value of the things unlawfully detained.

If any perſon ſhall offer to ſale any effects belonging to any veſſel loſt as aforeſaid, and unlawfully taken away, or ſuſpected ſo to have been, it ſhall be lawful to ſeize, and carry the ſame, or give notice thereof with all convenient ſpeed, to ſome juſtice of the peace; and if the perſon offering them to ſale, or ſome other perſon in their behalf, ſhall not appear before the juſtice within ten days after ſuch ſeizure, and make out to the ſatisfaction of the juſtice, his property in the goods, or in ſome perſon who employed him, then the goods ſhall be delivered for the uſe of the right owner, upon payment of a reaſonable reward for ſuch ſeizure, to be aſcertained by the juſtice, to the perſon who ſeized the ſame, and ſuch juſtice ſhall commit the offender to the common gaol for ſix months, or until he ſhall have paid the owner treble the value of the goods.

In caſe any perſon, not employed by the maſter, &c. in the ſalvage of any veſſel or the cargo, &c. ſhall, in the abſence of perſons ſo employed, ſave any ſuch ſhip, goods, &c. and cauſe the ſame to be carried, for the benefit of the owners or proprietors into port or place of ſafe cuſtody, immediately giving notice to ſome juſtice of the peace, magiſtrate, cuſtom-houſe or exciſe officer, or ſhall diſcover to any magiſtrate or officer where any ſuch goods are wrongfully bought, ſold, or concealed, ſuch perſon ſhall be intitled to a reaſonable reward, to be paid by the maſter or owner of ſuch veſſel, in like manner as ſalvage is to be paid, by 12 *Anne*, intitled, an act for the preſerving all ſuch

ſhips

ſhips and goods thereof, which have happened to be forced on ſhore, or ſtranded upon the coaſt of this kingdom, or any other of his majeſty's dominions, or elſe in the manner herein after preſcribed, as the caſe ſhall require.

For the better aſcertaining the ſalvage, and putting the acts in execution, the juſtice of the peace, mayor, bailiff, collector of the cuſtoms, or chief conſtable, who ſhall be neareſt where any ſhip is ſtranded or caſt away, ſhall, forthwith give notice for a meeting of the ſheriffs or their deputies, the juſtice of the peace, mayor or other chief magiſtrate of towns corporate, coroners, and commiſſioners of land-tax, or any five or more of them, who are required and impowered to employ proper perſons for ſaving ſhips in diſtreſs, and ſhips and goods as ſhall be ſtranded or caſt away; and alſo to examine perſons concerning the ſame, or the ſalvage thereof, to adjuſt the quantum of ſuch ſalvage, and diſtribute the ſame, in caſe of diſagreement, among the parties: And that every perſon, attending and acting at ſuch meeting, ſhall be allowed four ſhillings a day, out of the effects ſaved by their care and direction.

But if the charges and rewards for ſalvage, directed by the act 11 *Anne*, and by this preſent act, be not paid or ſecurity given within forty days, the officer of the cuſtoms, concerned in ſuch ſalvage, may borrow money on the goods, &c. by bill of ſale, on ſuch part of the goods, &c. as ſhall be ſufficient, redeemable upon payment of the principal ſum and intereſt, at four *per cent.*

And if oath ſhall be made before any magiſtrate, lawfully impowered to take the ſame, of any theft, and the examination taken ſhall be delivered to the clerk of the peace, for the county, &c. or his deputy; or if oath ſhall be made of the breaking any ſhip, contrary to the act, 12 *Anne*, and the examination delivered to the clerk of the peace or his deputy, he ſhall cauſe the offender to be proſecuted, either in the county where the fact was committed, or the county adjoining, where any indictment may be laid by any other proſecutor; and if the fact be committed in *Wales*, then the proſecution may be carried on in the next adjoining *Engliſh* county: The charge of ſuch proſecution by the clerks of the peace to be ſettled by the juſtices at ſeſſion, and paid by the treaſurer of the county, &c. the clerk of the peace, on refuſal or neglect to carry on ſuch proſecution, to forfeit one hundred pounds for every offence, to any perſon who ſhall ſue for the ſame.

The lord wardens of the *Cinque ports*, the lieutenant of *Dover caſtle*, the deputy warden of the *Cinque ports*, and the judges officiate, and commiſſary of the court of admiralty of the *Cinque ports*, two ancient towns, and the members thereof, for the time being, and every perſon appointed by the lord wardens of the *Cinque ports*, ſhall put the acts in execution within the juriſdiction of the *Cinque ports*, two ancient towns, and their members, in the ſame manner, as the juſtices, &c. in other places.

If any perſon, appointed to put this act in execution, ſhall be wounded in ſuch ſervice, ſuch perſon or perſons, ſo wounding him, ſhall, upon trial and conviction, at the aſſizes or general goal delivery, or at the general or quarter ſeſſions for the county, &c. be tranſported for ſeven years, to ſome of his majeſty's colonies in *America*.

Any juſtice of the peace, in the abſence of the ſheriff, may take ſufficient power to repreſs all violences and enforce the execution of this act.

To prevent confuſion among perſons aſſembled to ſave any ſhip, &c. all perſons ſhall conform to the orders of the maſter, or other officers, or owners; or for want of their preſence or direction, to any of the perſons appointed to put this act in execution, in the following ſubordination: Firſt, to the orders of the officer of the cuſtoms, then of the exciſe, the ſheriff of the county, or his deputy, a juſtice of peace, the mayor or chief magiſtrate of any corporation, the coroner, the commiſſioner of the land-tax; then of any chief conſtable, petty conſtable, or other peace officer: And, whoever acts, knowingly or wilfully, contrary to ſuch orders, ſhall forfeit five pounds, and in caſe of non-payment, be ſent to the houſe of correction, for any time not exceeding three months.

Nothing in this act extends to *Scotland*.

Of

Of *Salvage*, *Average*, or *Contribution*.

SALVAGE is an allowance made for ſaving of a ſhip or goods, or both, from the dangers of the ſeas, pirates, or enemies; it is provided for by ſeveral Engliſh ſtatutes, many of which have been given under the preceding head, as properly relating to *wrecks* on ſhore and ſhips ſtranded on the coaſts of *England*.

We are now to treat of ſalvage in general at ſea; and on foreign coaſts.

SALVAGE is allowed by all nations, it being reaſonable that a man ſhould be rewarded who hazards his life, or employs his time, in the ſervice of another; more eſpecially as without his aid the lives and property of the parties in diſtreſs moſt probably would have been loſt.

The only difficulty, therefore, that can ariſe on the ſubject of ſalvage, is, as to the proportion of the ſums of money, or other gratuities to be allowed; and where there are no ſtated laws or cuſtoms to go by, we muſt be guided by the particular circumſtances of different caſes. This ſhould be the line of conduct obſerved by arbitrators. For though great promiſes may have been made in the hour of danger by the maſter and mariners, yet when the deciſion comes before a court of judicature, or arbitrators, they are to guard againſt exorbitant demands for ſalvage, and the reward muſt be regulated by the pains and trouble the ſalvers were put to. *Leg. Oleron.*

For the charges of ſalvage, very great allowances have been made to divers and ſalvers, as the half, the third, or the tenth of the things ſaved, according to the depth of water, out of which they were fiſhed, whether fifteen, eight, or one fathom. Generally, a tenth part for ſalvage on the coaſt, and a fifth for him, who, ſaving himſelf, carries ſomething with him, as gold, ſilver, jewels, or valuable papers, which being eaſy of tranſportation are ſometimes ſaved by the mariners who eſcape from a ſhipwreck.

Where things are caſt up by ſhipwreck, or left through caſting in ſtorms, the laws of *Rhodes* allow to the finder, a fifth part for the ſaving, and in *France* they allow one third part for ſalvage.

If the ſhip only periſh, and the goods be ſaved, then the goods ſhall pay the tenth or the fifth, as the difficulty of the ſaving thereof ſhall require: and gold, ſilver, ſilk, and the like, being of eaſy tranſportation, ſhall pay leſs than goods of greater weight, and more burthenſome for carriage, which are in greater danger. *Malines Lex Merc. P.* 119.

Salvers may detain goods till agreement is made, and ſecurity given, for the payment of the ſalvage; but they cannot convert them to their own uſe, in caſe the *quantum* of the ſalvage is diſputed; they muſt remain as depoſits till the conteſt is decided, and muſt then be delivered up to the owners, upon payment of the ſums awarded for the ſalvage.

If goods are abandoned or given up to the ſalvers, there can be no claim for ſalvage; for ſalvage can never exceed the benefits to be derived from it. *Lord Kaims' Prin. of Equity, P.* 373.

Though effects, recovered from ſhipwreck, ſhould afterwards be irrecoverably loſt, yet ſalvage muſt be allowed for the recovery. In like manner as for a ſhip, taken again by an enemy after a ranſom or recapture.

Anchors are the moſt common things found at ſea; and if they are fiſhed up, without any buoy or cable floating to direct the ſalvers, one half is allowed; but if there is a buoy or cable, then only one third. But as it frequently happens that diſputes ariſe concerning the finding of anchors and cables; a remedy is provided by ſtat. 3 *Geo.* I. C 13. S. 6. The lord warden of the *Cinque ports* ſhall nominate, under his hand and

ſeal,

ſeal, three or more perſons in each of the *Cinque ports*, two ancient towns, and their members, to adjuſt any difference relating to ſalvage, between the maſter of any ſhip that has in bad weather been forced from her anchor and cable, and the perſons bringing them on ſhore: And if any veſſel be forced from her cables and anchors by extremity of weather, and leave the ſame in any roads within the juriſdiction of the *Cinque ports*, and the ſalvage cannot be adjuſted between the perſons concerned; the ſame ſhall be determined in twelve hours by any one or more of the perſons appointed as aforeſaid.

The maſter and ſeamens' wearing apparel are always excepted from the allowance of ſalvage.

If a ſhip is found adrift at ſea, having been abandoned by the maſter and crew, the allowance for ſalvage will be much more than if any perſon had been found on board.

Caſe: An outward bound *Dutch Eaſt-Indiaman* ſtruck upon the ſands off the port of *Dunkirk*; the maſter and his crew, imagining ſhe would go to pieces, as it blew a hard gale, too haſtily abandoned her, and made the beſt of their way in their boats to *Oſtend*, the ſurf not admitting of their making their harbour of *Dunkirk*. Two days after, a paſſage-boat belonging to *Dover* found the ſhip adrift, having worked herſelf off with the tides, and brought her ſafe into *Dunkirk*. The maſter ſoon arrived there, and diſputed the *quantum* of the ſalvage, which the admiralty court at *Dunkirk* adjudged to be one half, and it was paid accordingly.

The valuation of a ſhip, in order to aſcertain the rate of ſalvage, may be determined by the policy of inſurance, if there is no reaſon to ſuſpect ſhe is undervalued; the ſame rule may be obſerved with reſpect to goods, where there are policies of inſurance upon them. Where this is not the caſe, the ſalvers have a right to inſiſt upon proof of the real value, which may be done by the merchants' invoices, and they muſt be paid accordingly.

AVERAGE and CONTRIBUTION are ſynonimous terms in marine caſes, and ſignify a mean proportion of loſs between the owners of goods thrown overboard in a ſtorm (in order to preſerve the remainder, with the ſhip, and lives of the men) and the proprietors of thoſe that are ſaved, and of the veſſel.

And as ſhips in their voyages are expoſed to ſtorms, and often ſaved from periſhing, by caſting goods overboard to lighten them, it has, therefore, been always allowed, and is juſtified by law and cuſtom, and in caſe of imminent danger any thing may be thrown away to evade it. Though as heavy goods ſeem moſt likely to anſwer the purpoſe, and are generally leaſt in value, they ſhould be firſt deſtined to deſtruction.

However, to make this action legal, the three following eſſential caſes ought to concur:

1ſt. The ſhip muſt be in evident hazard of periſhing, with her cargo and crew.

2d. The reſolution the captain takes on this melancholy occaſion ſhould be in conſequence of a conſultation held with his officers and ſailors, to endeavour to ſave themſelves, ſhip and cargo, either by throwing ſome goods overboard, or by cutting ſome of the maſts, &c. away, and by occaſioning theſe extraordinary expences ſtrive to ſecure the remainder for the proprietors' benefit.

3d. That the ſhip and cargo, or the part of them that are ſaved, has been ſaved by that means uſed, with that ſole view.

Agreeable to theſe three axioms, it muſt be concluded, that all the expence and loſſes, which are thus voluntarily made to prevent a total one of ſhip and cargo, ought to be equally borne by the ſhip, and her remaining lading. And this is called *general* or *groſs* average.

But what is broken or loſt by a ſtorm, as anchors, cables, maſts, ſails, cordage, &c. is not to be comprehended in groſs averages, becauſe the tempeſt only was the occaſion of this loſs, and it was not made by the deliberation of the maſter and his crew, with the view to ſave the ſhip and lading, though on the contrary, if after advice taken by the company, or major part of them, the captain cuts away, or abandons any thing of the ſhip or cargo, with a view to prevent a greater misfortune, all that is ſo cut away, &c. muſt be brought into a general average.

If

If the ſhip happily out-weathers the ſtorm, and arrives in ſafety at her deſtined port, the captain muſt make his regular proteſts, and beſide, *jointly* with the major part of his crew, muſt ſwear, that the goods were caſt overboard for no other cauſe, but purely for the ſafety of ſhip and lading; and the method of elucidating and clearing up this point varies according to the ſeveral countries and places they arrive at.

The ſhip arriving in ſafety, thoſe goods ſhe brings with her muſt come into a general average, and not only thoſe that pay freight but *all* that have been ſaved and preſerved by ſuch *ejection*, even money, jewels, clothes, &c.

But a man's apparel in uſe, and victuals, &c. put aboard to be ſpent, are totally excluded from the contribution.

The loſs of anchors, maſts, and rigging, occaſioned by common accidents at ſea: The damages which happen to merchandiſe by ſtorms, capture, or ſhipwreck, wet or rotting (not owing to any neglect of the maſter) are loſſes to be borne by, and the expences paid by the thing that ſuffered the damage. And this is called ſimple or particular average.

In the rating of goods by way of contribution, this order uſed to be always obſerved, viz. If they are caſt overboard before half the voyage be performed, then they are to be eſteemed at the price they coſt; and if after, then at ſuch price as the reſt, or the like ſorts, ſhall be ſold at the place of diſcharge; and this regulation continues ſtill in *France* and *Holland* though here and elſewhere the loſt and the ſaved are ſometimes eſtimated as the latter ſell. *Job Locinius. L. 2. C. 7. de Jactu; & 8 de Contribut.*

The owner of the goods that have been thus ejected, or his factor, ſhould take care to have the loſs valued before the ſhip's diſcharge, in which the maſter ought to aſſiſt, and ſettle all averages before he unloads. *Leg. Navis 4. ad Leg. Rhod. ad Venius's comment.*

And it is not only the goods that are thrown over that muſt come into the average, but thoſe alſo which ſhall have received any damage, by the action of the others' ejectment, by wet, &c.

In ſtating an average on goods, regard ſhould be had to what deductions ought to be made from the invoice amount, covered for draw-backs, bounties, and other allowance at the cuſtom-houſe on exportation: Alſo for diſcounts, and abatements of duties, &c. on importation; and for prompt payment on ſales, together with the uſual leekage, weſtage, &c. It ſhould likewiſe be conſidered whether the damaged goods, (although the whole of the goods which were loaded may be delivered) are increaſed or diminiſhed in weight or quantity by means of the ſea water, as hemp, ſugar, &c. The true weight or quantities, as ſhipped and landed, ſhould be diſcovered and compared; and the ſeveral differences of qualities attended to, particularly in large parcels or cargoes of goods of the ſame denomination, in order to find on which qualities the damages may have happened: for unleſs all theſe circumſtances be adverted to as the caſe may require, the average will be ſtated erroneouſly. *Weſkett's Digeſt of Laws of Inſurance.*

Average is to be allowed as often as it happens, either once or oftner altho' the ſhip afterwards ſhould be loſt in the ſame voyage. *Ord. of Copenh.*

If goods ſhipped in *England* are in tempeſt thrown overboard, in order to preſerve the veſſel and crew, and theſe goods are taken up and preſerved by another *Engliſh* ſhip, the owners bringing *Trover*, it lies, becauſe delivered upon the land. *2 Roll's* Rep. 498. *Caps* verſ. *Tooker.*

It is lawful for perſons to caſt goods overboard out of a ferry-boat, in caſe of a tempeſt, to preſerve their lives; but, if the ferryman ſurcharge the boat with goods, the owners of them ſhall have their remedy againſt him, but not otherwiſe. *12 Coke* 63. *2 Bulſtr.* 280.

So if an ejection of goods from any ſhip is occaſioned by the indiſcretion of the maſter's lading her above *Birth-mark*, it is cuſtomary in ſuch caſes, by the marine laws, to have no contribution made, but ſatisfaction is due from the ſhip, maſters or owners. *Luſt. Sernus, S. 27. & Si. 23. ad Leg.* Aquil.

And as this law doth take care, that ſuch common calamities ſhall be borne by all the intereſted parties, by a general contribution, ſo the *common law* takes notice of the misfortunes, and makes proviſions for the maſter's indemnification; and therefore if the owner of ſuch ejected goods ſhall bring an action againſt the maſter or the owner

of

of the veſſel, the defendant may plead the ſpecial matter, and the ſame ſhall bar the plaintiff. 12 *Coke* 63. 2 *Bulſtr.* 280. *Bird.* v. *Aſtoot.*

As the common law looks upon the goods or cargo as a pawn or pledge for the *freight*, ſo the *marine law* looks upon them likewiſe as a ſecurity for anſwering any *average* or *contribution*, and that the maſter ought not to deliver them *(as above)* till the *contribution* is ſettled, they being tacitly obliged for the one as well as the other. *Ad. Leg. Rhod. L.* 2.

If a *lighter*, *ſkiff*, or the ſhip's boat, into which part of the cargo is unladen to lighten the ſhip, periſh, and the ſhip be preſerved, in that caſe contribution is to be made; but if the ſhip be caſt away, and the lighter, boat, or ſkiff, be preſerved, there no contribution or average is to be had, it being a rule *no contribution but where the ſhips arrive in ſafety. F. de Leg. Rhod. Leg. Navis onuſt. Leg. Navis. ad Leg. Rhod. de Jactu.*

If a ſhip be taken by enemies or pirates, and the maſter redeem her and cargo promiſes a certain ſum of money, for performance whereof he becomes a pledge or captive in the hands of the captor; in this caſe, he is to be redeemed at the expence of the ſhip, lading, and money (if any on board) all being obliged to contribute for his ranſom, according to each man's intereſt. *Moor*, 297. *Leg. Rhod. de Jactu. L.* 2. *Si Navis a Piratis.*

So where a pirate takes part of the goods to ſpare the reſt, contribution muſt be paid. *Moor. F.* 297. *Pl.* 443. *Hicks* v. *Palington.*

But if a pirate takes by violence part of the goods, the reſt are not ſubject to groſs average, unleſs the merchant hath made an expreſs agreement to pay it after the ſhip is robbed.

Though if part of the goods are taken by an enemy, or by letters of marque and reprizal, *è contra. Grot. de Introd. Jur. Holl. P.* 29.

In ſettling a groſs average, an eſtimate muſt be made of all the goods loſt and ſaved, as well as of what the maſter ſhall have ſacrificed of the ſhip's appurtenances to her preſervation, and that of her cargo; and if any thing flung into the ſea is again recovered, contribution is only to be made for the damage it ſhall have received. *Peckeus ad Leg. Rhod. de Jactu. F.* 196, 197, 198.

The pilot's fee, that brought the ſhip into a port or haven for her ſafeguard (it being not the place ſhe was deſigned for) muſt be contributed to, as the raiſing her from the ground muſt be, when there is no fault in the maſter.

If a maſter of a ſhip lets her out to freight, and in conſequence therof receives his lading, and afterwards takes in ſome goods, without leave of his freighters, and on a ſtorm ariſing at ſea, part of his freighter's goods are thrown overboard, the remainder are not ſubject to an average, but the maſter make good the loſs out of his own purſe. *Grot. de Intro. Jur. Holl.* 329. *Venius* and *Peckeus.* Com. on the Laws of *Rhod. Fol.* 236.

If a ſhip is taken by force and carried into ſome port, and the crew remains on board to take care of, and reclaim her, not only the charges of ſuch reclaiming ſhall be brought into a general average, but the wages and expences of the ſhip's company during her arreſt, and from the time of her capture and being diſturbed in her voyage. *J. P. Ricard. Le Negoce de* Amſterdam. *p.* 279.

But the ſailors' wages, &c. of a ſhip detained in port by order of ſtate, ſhall not be brought into an average, and the reaſon aſſigned for it is, that in the preceding caſe, the crew remained aboard to take care of the veſſel, whilſt they were endeavouring to reclaim her, and theſe charges were occaſioned with the *ſole* view of preſerving the ſhip and cargo for their proprietors; but in this latter caſe, there was no room for ſuch a pretence as the embargoing ſovereign would not have either ſhip or cargo, but only hinder their departure for ſome political reaſons, wherefore it could not be ſaid, that the ſhip's company remained on board to prevent an entire loſs; the only motives to be offered for an average. Ditto. And he from Mr. *Adrian Verver* on the marine laws of the *Low Countries.*

Nevertheleſs, it ſeems that both reaſon and juſtice require that the expence and wages of a ſhip's company, detained in port by a prince's order, ſhould be brought into a general average; for if, on one ſide, the merchants who have laden her, are conſiderable ſufferers by the delay, in the arrival of their goods at the deſtined ports, the owners of the ſhip are not leſs ſo, more eſpecially if the crew is large, and by the

detention

detention long; and thoſe who drew up the ordinance of *Lewis* XIV. very well perceived in part, that to oblige the owners of a veſſel ſo detained, to ſupport the whole expence, would be a great hardſhip and injuſtice, as the VIIth article of the ſaid ordinance (under the title of *averages*) expreſſes in direct terms, *viz. The food and wages of ſailors, belonging to a ſhip embargoed by an order of ſtate, ſhall be alſo reputed as part of general averages, if ſhe is hired by the month; but if ſhe is freighted by the voyage they ſhall be borne by her alone.*

From whence, I think it ought to be concluded, that although a ſhip freighted by the month or voyage, is only mentioned in the foregoing, yet when the proprietors of a veſſel hire her *crew* by the month, they have a right to bring the expence and wages of their ſailors into an average, for the whole time that the ſhip ſhall be detained; though on the contrary, they cannot juſtly pretend to bring the expence of the mariners into an average, when they are hired for the voyage, as the expence only is always the ſame, whether they be hired for the month or voyage, and being occaſioned by the will of the ſovereign who laid the embargo, I do not ſee that there ought to be any diſtinction, unleſs there were ſome goods aboard, which were the cauſe of her arreſt; for in this caſe it would be reaſonable, that the ſaid merchandiſes ſhould pay the whole expence.

Though it muſt be noted, the charges of unlading a ſhip, to get her into a river or port, ought not to be brought into a general average, but when occaſioned by an indiſpenſable neceſſity to prevent the loſs of ſhip and cargo; as when a ſhip is forced by a ſtorm to enter a port to repair the damage ſhe has ſuffered, if ſhe cannot continue her voyage without an apparent riſque of being loſt; in which caſe, the wages and victuals of the crew are brought into an average from the day it was reſolved to ſeek a port to refit the veſſel, to the day of her departure from it, with all the charges of unlading and relading, anchorage, pilotage, and every other due and expence, occaſioned by this neceſſity.

The maſter of a ſhip, who is obliged from the aforeſaid motives, to cut away, or throw overboard, any of his maſts, rigging, &c. has a privileged hypothecation, and the right of detention of the goods he ſhall carry to their deſtined port, till they contribute to a general average; and it is to be obſerved, that goods caſt overboard to lighten the ſhip, make no *derelict*.

Having now gone through what I thought neceſſary to offer on the ſubject of general and particular *averages*, I ſhall juſt mention a word or two, of what we term *petty average*, being a ſmall duty joined to *primage*, which cuſtom has made a maſter's perquiſite, *extra* of the freight, and is commonly here 5 *per cent.* as it has been ſettled in *France* and *Holland*, &c. though 10 *per cent.* is commonly paid in the latter, notwithſtanding two publick edicts which limit it, as aforeſaid, to half the ſum: The origin of it was, an allowance made to maſters of veſſels for ſundry petty expences, to which the lading was obliged to contribute, but has been, for ſome years paſt, tranſmuted to the terms aforeſaid; and I ſhall not now enlarge on this ſubject of *averages*, but refer my reader to what I ſhall have occaſion to ſay more about them, under the title of *Inſurance*; in the mean time, I ſhall content myſelf with the quotations offered, in hopes I have neither exceeded nor fallen ſhort of my readers' expectations, in my treating this extenſive theme, which of itſelf would furniſh ſufficient matter for an entire volume.

Of *Britiſh Ports, Havens, Lighthouſes* and *Sea Marks.*

A *Port, Harbour* or *Haven,* is a place where ſhips may ſhelter from bad weather, and where cuſtom-houſes are appointed to ſuperviſe their lading and unlading; theſe in *England* have many members and creeks belonging to them, which are diſtinguiſhed as follows, *viz.*

Members, are thoſe places, where antiently a cuſtom-houſe hath been kept, and where officers or their deputies attend, as they are lawful places of exportation or importation.

Creeks, are places where commonly officers are, or have been, placed by way of prevention, not out of duty or right of attendance, and are not lawful places of exportation or importation, without a particular licence or ſufferance from the port or member under which it is placed.

The ſeveral licenced ports for lading and landing of goods, with their dependencies, as they now account at the cuſtom-houſe, *are,* viz.

Ports.	Members.	Creeks.
London	— — — —	*Graveſend*
	Malden	*Leigh*, *Burnham*, *Weſt Merſey*
Ipſwich	*Colcheſter*	*Eaſt Merſey*, *Brickly*, *Wivenhoe*
	Harwich	*Maningtree*
Yarmouth	*Woodbridge*	
	Aldborough	*Orford*, *Dunwich*
	Southwold	*Walderwich*, *Leoſtoffe*
	— — —	
	Blackney and *Cley*	
Lynn Regis	*Wells cum Burham*, *Wiſbech*	*Hitcham*, *Croſs Keys*
Boſton	— — — —	*Spalding*, *Foſdick*, *Wainfleet*, *Numby Chapel*, *Thetlethorp*, *Saltfleet*
Hull	*Grimſby*, *Bridlington*, *Scarborough*	*Gainthorp*

Newcaſtle

Ports.	Members.	Creeks.
Newcaſtle upon Tyne	*Whitby*, *Stockton*, *Hartlepool*, *Sunderland*, *Shields*	*Middleborough*
	— —	*Seaton Sluice*, *Blith Nooke*
Berwick	— — —	*Aylemouth*, *Warnewater*, *Holy Iſland*, *Eaſt Marches*, containing the Coaſt of *Northumberland*, bordering on *Scotland*.
Carliſle	— —	*Weſt Marches*, containing the Coaſt of *Cumberland*, bordering on *Scotland*.
	Whitehaven	*Workington*, *Ravinglaſs*, *Milnthorpe*
Cheſter	*Lancaſter*	*Pyte of Fowdery*, *Graunge*
	Poulton	*Wyrewater*, *Preſton* and *Rible Water*, *Sanky Bridge*
	Liverpool	*Fradſham*, *South Shore* of the River of *Merſey* to the Red Stones.
	— —	*Hilbree*, *Dawpool*, *Neſton*, *Burton-head*, *Baghill*, *Moſton*
	Aberconway	
	Beaumaris	*Amlogh*
	Caernarvon	*Barmouth*
	Conway	
	Holyhead	
	Pulhelly	
Milford	*Aberdovy*, *Cardigan*	*Aberuſtab*, *Newport*, *Fiſchard*
	Pembroke	*Haverford-Weſt*, *Tenby*, *Caermarthen*, *Lanelthy*, *North Burrys*
		Cardiffe

Ports.	Members.	Creeks.
Cardiffe	*Swanzey*	*South Burrys* *Neath* or *Briton Ferry* *Newton*
	— — —	*Aberthaw* *Penarth* *Newport* *Chepſtow*
Glouceſter	— — —	River *Severn* from *Bridge-north* to *King Road*
Briſtol	— — —	*Pill* *Uphill*
Bridgewater	*Minehead*	
Plymouth	*Padſtow* *St. Ives* *Penzance* *Gweek* *Falmouth* *Fowey* *Lowe* *Penryn* *Truro*	*St. Maures*
	Ilfracomb	*Saltaſh* *Stonehouſe* *Couſland*
Exeter	*Barnſtaple*	
	Biddleford	*Clovelly* *Appledore*
	— — — —	*Tincomb* *Starcroſs* *Bear* and *Saton* *Topſham* *Pouldram* *Sydmouth* *Lympſon* *Exmouth* *Plymouth*
	Dartmouth	*Saltcomb* *Brixham* *Torbay* *Totneſs*
Poole	*Lyme Regis*	*Bridport* *Charmouth*
	Weymouth	*Portland* *Lulworth*
Southampton	— — — —	*Swanidge* *Wareham*
	— — — —	*Chriſt-church* *Lymington*
	Cowes	*Yarmouth*
	Portſmouth	*Newport*
Chicheſter		

Ports.	Members.	Creeks.
	Arundel	*Emſworth*, *Pagham Point*, *Selſey*
	Shoreham	
	Lewes	*Brighthelmſtone*, *New Haven*, *Seaford*
Chicheſter	*Pemſey*	
	Haſtings	
	Rye	*Winchelſea*, *Lyd*, *Rumney*
	Hyth	
	Dover	
	— — —	*Ramſgate*, *Margate*, *Whitſtable*
Sandwich	*Deal*	
	Feverſham	
	Milton	
	Rocheſter	*Queenborough*

Note, All the ports and havens in *England* are *infrà corpus comitatûs*, and the court of admiralty cannot hold juriſdiction of any thing done in them. *Holland's* caſe, earl of *Exeter*, 30 *H.* VI. And becauſe he held plea in the admiralty of a thing done *infrà portum de Hull*, damages were recovered againſt him, two thouſand pounds.

And the port of *London* being of great importance, in regard of the cuſtoms, the limits of it have been ſettled by the *Exchequer*, and declared to extend, and to be accounted, from the promontory, or point, called *North-Foreland*, in the iſle of *Thanet*, and from thence *Northward*, in a ſuppoſed line to the oppoſite promontory, or point, called the *Naſe*, beyond the *Gun-fleet*, upon the coaſt of *Eſſex*, and continued weſtward, through the river of *Thames*, and the ſeveral channels, ſtreams, and rivers falling into it, to *London-bridge*, ſave the uſual and known rights, liberty, and privilege to the ports of *Sandwich* and *Ipſwich*, and either of them, and the known members thereof, and of the cuſtomers, comptrollers, ſearchers, and other deputies, within the ſaid ports of *Sandwich* and *Ipſwich*, and the ſeveral creeks, harbours, and havens, to them, or either of them, reſpectively belonging, within the counties of *Kent* or *Eſſex*.

This account of ports, &c. might have been omitted till I came to treat of the cuſtoms; but, as I thought it more properly introduced here, I have inſerted it, and ſhall ſubjoin an abſtract of the laws in force concerning them. For though it is probable few or none of my readers may be intereſted in the trade of them all, yet, that every one may meet the information he may occaſionally want, I ſhall briefly mention what has been publickly enacted, for their eſtabliſhment and preſervation.

BURLINGTON.

From the firſt of *May*, 1697, until the 1ſt of *May*, 1704, the duties herein-mentioned ſhall be paid for the repairing the port or pier of *Burlington*, viz. one farthing for every chaldron of coals, laden on board any veſſel at the port of *Newcaſtle*, or at *Sunderland*, *Blythe*,

Blythe, *Seaton*, *Sluice*, or any other member of the port of *Newcaſtle*, which ſhall be paid to *Arthur*, lord viſcount *Irwin*, &c. 8 *Will.* III. C. 29. S. 1.

All monies raiſed for the duties aforeſaid, &c. ſhall be by the commiſſioners applied to the repairing the ſaid port or pier of *Burlington*, &c. S. 4.

Continued by 1 Geo. I. *Cap.* 49. 5 Geo. I. *Cap.* 80. *for twenty-five years, from the 24th of* June, 1730, *and* 26 Geo. II. *for twenty-five years, from the 24th of* June, 1753.

By this act, veſſels belonging to *Great Yarmouth* in *Norfolk* are exempted from this duty, the maſters having a certificate, upon oath, before the mayor of *Yarmouth*, that the owners of ſuch veſſel, or the greateſt part, are inhabitants of that town.

DOVER.

From the 1ſt of *May*, 1700, to the 1ſt of *May*, 1709, there ſhall be paid by the maſter of every *Engliſh* ſhip, of the burthen of twenty tons, and not exceeding three hundred tons, for every lading and diſcharging within this realm, from, to, or by *Dover*, or coming into the harbour there, not having a cocket teſtifying his payment before that voyage, towards the repair of Dover harbour, 3d. for every ton, and of the aliens ſhips, of the burden aforeſaid, the like ſum (excepting ſhips laden with coals, grindſtones, or *Purbeck* or *Portland* ſtones) and for every chaldron of ſea coals, or ton of grindſtones, one penny half-penny; the ſame to be paid to the cuſtomer or collector of the cuſtoms, in ſuch port, whence ſuch ſhip ſhall ſet forth, or where ſuch ſhip ſhall arrive, before they lade or unlade; the account of the number of tons to be made according to the entry of the goods of every ſhip in the cuſtom-houſe, and no entry of the goods to be allowed without information made on oath by the maſter, containing the burden thereof, and payment made of the ſums aforeſaid; of which payment the maſter ſhall have allowance of the merchants, according to the rates of the goods, by way of average, &c. 11 *Will.* III. C. 5. S. 1.

Provided that no coaſter or fiſherman ſhall pay the duty oftener than once in one year. S. 2.

Ships belonging to *Weymouth* and *Melcomb Regis*, and *Lyme Regis*, ſhall be exempted from paying to the harbour of *Dover*, ſo as they bring a certificate upon oath before the mayor, under the common ſeal of the ſaid corporations, that the ſhips belong thereto, and the inhabitants of the ſaid corporations are owners of the major part of ſuch ſhips. S. 8.

All ſhips *Engliſh* built, and manned according to the act of navigation, belonging to *Great Yarmouth*, ſhall be exempt from paying the ſaid duties, if the maſter produces a certificate as above, &c. S. 9.

Ships belonging to *Ramſgate*, in the iſle of *Thanet*, ſhall be exempted from paying to *Dover* harbour, bringing a certificate as before, &c. S. 10.

Every ſhip that ſhall go through the gates of the works of the harbour ſhall, before ſhe go into the gates, take down her ſails, ſo that ſhe may not go ſailing in, upon pain that every captain of ſuch ſhip, ſo ſailing in, ſhall forfeit to the wardens and aſſiſtants of the harbour, *ten ſhillings*, for the uſe of the harbour, to be recovered by action of debt, &c.

Continued by 2 Anne, *Cap.* 7. 4 Geo. I. *Cap.* 13. *and* 9 Geo. I. *Cap.* 30. *to the firſt of* May, 1744. *Further continued for twenty-one years by* 11 Geo. II. *Cap.* 7. *This act further continued for* 21 *years, by* 31 Geo. II.

MINEHEAD.

From the 24th of *June*, 1701, for one and twenty years, there ſhall be paid beſides the ancient acknowledgments accuſtomed to be paid to *Tregonwell Luttrell*, Eſq; and his anceſtors) for goods imported or exported, into, or out of, the port of *Minehead*, the

the duties following, viz. ſuch ſum of money, not exceeding one half-penny *per* ſtone for wool, and one penny *per* ſtone for woollen and bay yarn imported as the truſtees hereafter appointed ſhall appoint; each ſtone to contain eighteen pounds, the duties to be paid by the perſon into whoſe poſſeſſion, or by whoſe order, the goods ſhall be delivered; and the wool imported ſhall be weighed at the town-hall, according to cuſtom; and for every ton of all other goods there ſhall be paid 6d. *per* ton, by every maſter of a ſhip that ſhall take on board or land any goods in the port of *Minehead*. 12 *Will.* III. C. 9. S. 1.

For every ſhip which ſhall come into the harbour (the ſaid port not being their diſcharging port) there ſhall be paid by the maſter the tonnage and keelage following, viz. for every ſhip uſing the coaſting trade, of thirty tons, and not amounting to fifty tons, 1s. and of fifty tons and upwards 2s. and for every ſhip of thirty tons, and not amounting to fifty, trading to other parts of *Europe*, or to his majeſty's plantations in *America*, 2s. 6d. and of fifty tons, and upwards 5s. and for every ſhip of thirty tons, and not amounting to fifty tons, and trading to any place in *Aſia*, *Africa*, or *America* (other than his majeſty's plantations,) 5s. and of fifty tons 10s. and the maſter paying the ſaid keelage ſhall have allowance for the ſame, of the merchants, by average. S. 2.

All money raiſed by the duties, and recovered for the forfeitures, &c. ſhall be by the truſtees applied to the building out a new head, clearing the beach, and other works for maintaining the pier and harbour, &c. S. 8.

After the ſaid term, ſo long as the harbour ſhall be kept up, there ſhall be paid to the lord of the manor of *Minehead*, the duties following, for goods imported, for the maintenance of the new head and other works, viz. for every twenty ſtones of wool, 1d. for every twenty ſtones of woollen and bay yarn 2d. for every ton of ſalt 2d. for every quarter of corn 2d. for every chaldron of coals 2d. S. 11.

Continued by 10 Anne, *Cap.* 24, *for ſixteen years, and by* 11 Geo. II. *Cap.* 8. *from the 24th of* June, 1738, *for forty years.*

WHITBY.

From the firſt of *May*, 1702, for nine years, there ſhall be paid unto the truſtees herein named, viz. the lord of the manor, *Ralph Boys*, and others for re-building the piers of the port of *Whitby*, by the owners of every ſhip that ſhall load coals at the port of *Newcaſtle*, or at *Sunderland*, *Blithe*, *Seaton*, *Sluice*, or any other member of the ſaid port, one farthing *per* chaldron, and for all the coals landed within the port of *Whitby*, for every chaldron, town meaſure, 6d. and for every ton weight of ſalt, landed at the port of *Whitby*, 2s. and for every quarter of malt, corn, and grain, 4d. and for all foreign goods imported in *Engliſh* bottoms, 3d. *per* ton; and all foreign bottoms importing ſuch goods, 6d. *per* ton; and for all butter ſhipped off from *Whitby*, 1d. *per* firkin; for all dried fiſh and mud fiſh, ſhipped off from *Whitby*, 1d. *per* ſcore; for all barrelled fiſh ſo ſhipped off, *per* barrel, 3d. Every *Engliſh* ſhip, which ſhall enter within the piers, ſhall pay 1s. and for every top of ſuch ſhip 4d. and all foreign ſhips 2s. and for every top of ſuch ſhip 4d. &c. 1 *Ann.* Stat. 1. C. 19. S. 1.

All money received by virtue of this act ſhall be employed for the re-building and repairing the ſaid piers, except the charge of collecting, &c. S. 2.

If the duties ſhall raiſe 6000l. over and above the charge of collecting and intereſt, the duty of one farthing *per* chaldron upon coals ſhall ceaſe. S. 7.

All ſhips *Engliſh* built, and manned according to the act of navigation, belonging to *Great Yarmouth*, ſhall be free from the ſaid duty of one farthing *per* chaldron; ſo as the maſter of ſuch ſhip, or ſome mariner on his behalf, produce a certificate made upon oath before the bailiffs of *Yarmouth*, that ſuch ſhip does belong to *Yarmouth*, and that the inhabitants thereof are owners of the major part of ſuch ſhip. S. 11.

Continued

Blythe, *Seaton*, *Sluice*, or any other member of the port of *Newcaſtle*, which ſhall be paid to *Arthur*, lord viſcount *Irwin*, &c. 8 *Will.* III. C. 29. S. 1.

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From the 24th of *June*, 1701, for one and twenty years, there ſhall be paid beſides the ancient acknowledgments accuſtomed to be paid to *Tregonwell Luttrell*, Eſq; and his anceſtors) for goods imported or exported, into, or out of, the port of *Minehead*, the

the duties following, viz. ſuch ſum of money, not exceeding one half-penny *per* ſtone for wool, and one penny *per* ſtone for woollen and bay yarn imported as the truſtees hereafter appointed ſhall appoint; each ſtone to contain eighteen pounds, the duties to be paid by the perſon into whoſe poſſeſſion, or by whoſe order, the goods ſhall be delivered; and the wool imported ſhall be weighed at the town-hall, according to cuſtom; and for every ton of all other goods there ſhall be paid 6d. *per* ton, by every maſter of a ſhip that ſhall take on board or land any goods in the port of *Minehead*. 12 *Will.* III. C. 9. S. 1.

For every ſhip which ſhall come into the harbour (the ſaid port not being their diſcharging port) there ſhall be paid by the maſter the tonnage and keelage following, viz. for every ſhip uſing the coaſting trade, of thirty tons, and not amounting to fifty tons, 1s. and of fifty tons and upwards 2s. and for every ſhip of thirty tons, and not amounting to fifty, trading to other parts of *Europe*, or to his majeſty's plantations in *America*, 2s. 6d. and of fifty tons, and upwards 5s. and for every ſhip of thirty tons, and not amounting to fifty tons, and trading to any place in *Aſia*, *Africa*, or *America* (other than his majeſty's plantations,) 5s. and of fifty tons 10s. and the maſter paying the ſaid keelage ſhall have allowance for the ſame, of the merchants, by average. S. 2.

All money raiſed by the duties, and recovered for the forfeitures, &c. ſhall be by the truſtees applied to the building out a new head, clearing the beach, and other works for maintaining the pier and harbour, &c. S. 8.

After the ſaid term, ſo long as the harbour ſhall be kept up, there ſhall be paid to the lord of the manor of *Minehead*, the duties following, for goods imported, for the maintenance of the new head and other works, viz. for every twenty ſtones of wool, 1d. for every twenty ſtones of woollen and bay yarn 2d. for every ton of ſalt 2d. for every quarter of corn 2d. for every chaldron of coals 2d. S. 11.

Continued by 10 Anne, *Cap.* 24, *for ſixteen years, and by* 11 Geo. II. *Cap.* 8. *from the 24th of* June, 1738, *for forty years.*

WHITBY.

From the firſt of *May*, 1702, for nine years, there ſhall be paid unto the truſtees herein named, viz. the lord of the manor, *Ralph Boys*, and others for re-building the piers of the port of *Whitby*, by the owners of every ſhip that ſhall load coals at the port of *Newcaſtle*, or at *Sunderland*, *Blithe*, *Seaton*, *Sluice*, or any other member of the ſaid port, one farthing *per* chaldron, and for all the coals landed within the port of *Whitby*, for every chaldron, town meaſure, 6d. and for every ton weight of ſalt, landed at the port of *Whitby*, 2s. and for every quarter of malt, corn, and grain, 4d. and for all foreign goods imported in *Engliſh* bottoms, 3d. *per* ton; and all foreign bottoms importing ſuch goods, 6d. *per* ton; and for all butter ſhipped off from *Whitby*, 1d. *per* firkin; for all dried fiſh and mud fiſh, ſhipped off from *Whitby*, 1d. *per* ſcore; for all barrelled fiſh ſo ſhipped off, *per* barrel, 3d. Every *Engliſh* ſhip, which ſhall enter within the piers, ſhall pay 1s. and for every top of ſuch ſhip 4d. and all foreign ſhips 2s. and for every top of ſuch ſhip 4d. &c. 1 *Ann.* Stat. 1. C. 19. S. 1.

All money received by virtue of this act ſhall be employed for the re-building and repairing the ſaid piers, except the charge of collecting, &c. S. 2.

If the duties ſhall raiſe 6000l. over and above the charge of collecting and intereſt, the duty of one farthing *per* chaldron upon coals ſhall ceaſe. S. 7.

All ſhips *Engliſh* built, and manned according to the act of navigation, belonging to *Great Yarmouth*, ſhall be free from the ſaid duty of one farthing *per* chaldron; ſo as the maſter of ſuch ſhip, or ſome mariner on his behalf, produce a certificate made upon oath before the bailiffs of *Yarmouth*, that ſuch ſhip does belong to *Yarmouth*, and that the inhabitants thereof are owners of the major part of ſuch ſhip. S. 11.

Continued

Continued until the 1ſt of *May*, 1723, by 7 *Anne*, and by 7 *Geo.* I. the duties before granted (except the ſaid duty of one farthing *per* chaldron) were made perpetual; and by 8 *Geo.* II. it was enacted, that from and after the 1ſt of *June*, 1735, the ſaid duty of one farthing *per* chaldron by 1 *Anne*, ſhould be revived for the term of thirty-one years, to commence from the 1ſt of *June*, 1735. And to rebuild or repair the *Eaſt* and *Weſt* piers of the ſaid harbour, an additional duty of a farthing *per* chaldron is granted by 23 *Geo.* II. P. 667, to be paid from and after the 1ſt of *June* 1750, for 31 years, by all veſſels loading or ſhipping coals at the port of *Newcaſtle upon Tyne*, or at *Sunderland*, *Blythe*, *Seaton*, *Sluice*, *Cullercoats*, or any other harbour, colliery, or place, reputed a member of the port of *Newcaſtle*, &c.

PARTON.

During the term of eleven years, there ſhall be paid unto the truſtees named in the act, for the enlarging and repairing the pier and harbour of *Parton* in *Cumberland*, by every coal owner that ſhall put coals on board any veſſel there, 2d. for every 192 gallons of coals, within ten days after ſuch coals are ſhipped; and by every maſter of every ſhip that ſhall load coals there 2d. for every 192 gallons; and, after the expiration of the ſaid eleven years, one farthing for every 192 gallons, to be paid by the maſter of the ſhip, before each ſhip goes out of the harbour. 4 *Ann.* C. 18. S. 1.

All ſuch money ſhall be employed for the enlarging, repairing, and cleanſing the harbour, &c. S. 4.

The duties upon coals granted by 4 *Anne*, *Cap.* 18. *for enlarging the pier and harbour* of Parton, *in the county of* Cumberland, ſhall be continued from the firſt of *May*, 1725, for fifteen years. 11 *Geo.* I. C. 16. S. 1.

The perpetual duty of one farthing, granted by the ſaid act, ſhall ceaſe; and, in lieu thereof, every maſter of a ſhip ſhall, for fifteen years, pay one halfpenny for every 192 gallons of coals, which ſhall be laden on board ſuch ſhip within the ſaid harbour. S. 2.

There ſhall be paid for all goods herein after mentioned, which ſhall be diſcharged out of any ſhip in the harbour, coming coaſtwiſe, from the 1ſt of *May*, 1725, for fifteen years, the duties following, *viz.* for every hogſhead of tobacco 3d. for every hogſhead of ſugar 6d. for every ton of wine or exciſeable liquors 2s. for every ton of hemp or flax 1s. 6d. for every hundred of deals 8d. for every laſt of pitch or tar 8d. for every ton of iron 1s. for every ton of raſt or other timber 4d. for every barrel of herrings 1d. for every pack of linen, containing two hundred weight, 1s. which duties ſhall be paid by the merchant into whoſe cuſtody the goods ſhall be delivered.

Every maſter of any ſhip ſhall pay for ſuch ſhip, upon her arrival in the harbour from any port of her diſcharge in *Europe*, other than the kingdoms of *Great-Britain* and *Ireland*, and the iſle of *Man*, 4d. *per* ton; and for every ſhip, upon her arrival from the port of her laſt diſcharge in *Aſia*, *Africa*, or *America*, 8d. *per* ton, to be admeaſured as deſcribed in 5 *Will.* and *Mar.* Cap. 20. and 8 *Anne*, Cap. 12. Sect. 4. Provided, that for every ſhip which ſhall come in for ſecurity, and not for their diſcharge, there ſhall be paid one fourth of the tonage and no more. S. 5.

After the termination of the ſaid fifteen years, one third part of the duties ſhall for ever continue for the perpetual repairing of the harbour. S. 6.

The duties granted by the act of 11 *Geo.* I. Cap. 16. ſhall be continued for the further term of twenty-one years, for enlarging the harbour of *Parton* in *Cumberland*. 5 *Geo.* II. C. 13. S. 1.

If the purpoſes are fully anſwered, &c. before the expiration of the ſaid term, the duties ſhall ceaſe; and the duty of a half-penny for every 192 gallons of coals exported from the ſaid harbour, and one third part of the duty on tonnage of ſhips (which, by the act of 11 *Geo.* I. Cap. 16. are made perpetual) ſhall commence. S. 2.

CATWATER.

CATWATER.

Benjamin Joules, his executors, &c. ſhall clear the harbour of *Catwater*, near *Plymouth* and *Sutton Poole* in *Plymouth*, and reduce the ſhoals ſo, that any fourth rate ſhip may ſafely go in and out, over any part of them, at half flood or ebb; and after the removal of the ſhoals, he ſhall keep the water to the ſame depth, &c. 8 *Ann.* C. 8. S. 1.

And after the 25th of *March*, 1710, the ſaid *Benjamin Joules* ſhall have the ſole ballaſting and unballaſting of ſhips belonging to her majeſty, and all other ſhips in *Plymouth Sound*, *Hammoaze*, *Catwater*, and *Sutton Poole*, or within the road between *St. Nicholas Iſland*, and the main land; and every maſter, &c. belonging to any ſhip that ſhall come into the ſaid harbours or road, and deliver or receive ballaſt, ſhall deliver and receive the ſame to and from the ſaid *Benjamin Joules*, under pain of forfeiting 5l. &c. to hold and enjoy the ſaid ſole liberty of ballaſting, &c. unto the ſaid *Benjamin Joules*, his executors, &c. for ſeventy-one years. S. 4, 5.

The ſaid *Benjamin Joules* ſhall be bound to furniſh all ſhips with ballaſt; and ſhall ballaſt and unballaſt the ſame upon ſuch terms as are herein mentioned, *viz.* the ſhips of her majeſty at 9d. *per* ton; all ſhips of the inhabitants of *Plymouth* or *Saltaſh*, at 9d. *per* ton; all other ſhips of her majeſty's dominions, at 10d. *per* ton, and all foreign ſhips at 12d. *per* ton.

LIVERPOOL.

The mayor, &c. and common-council of *Liverpool*, ſhall have power to make a wet dock or baſon, with wharfs, ſluices, and canals, upon the ground ſet a-part for that purpoſe. 8 *Ann.* C. 12. S. 2.

There ſhall, from the 24th of *June*, 1710, for one and twenty years, be paid unto the ſaid mayor, &c. for every veſſel (ſhips in her majeſty's ſervice excepted) coming into or out of the ſaid port, with any merchandiſe (the limits whereof are as far as a place in *Hoyle Lake*, called the *Red-Stones*, and from thence all over the river *Merſey* to *Warrington* and *Frodſham* bridges) by the maſters of ſuch ſhips, the duties herein after deſcribed, *viz.* for every ſhip trading between the port and *St. David's Head* or *Carliſle*, for every ton 2d. For every ſhip trading between *St. David's Head* and the *Land's End*, or beyond *Carliſle* to the *Shetlands*, or the *Iſle of Man*, for every ton 3d. For every ſhip trading to *Ireland*, for every ton, 4d. For every ſhip trading to *Norway*, *Denmark*, *Holſtein*, *Holland*, *Hamburgh*, *Flanders*, or any part of *France*, without the ſtraits of *Gibraltar*, or *Jerſey*, or *Guernſey*, for every ton 8d. For every ſhip trading to *Newfoundland*, *Greenland*, *Ruſſia*, and within the *Baltick*, *Portugal* and *Spain*, without the *Straits*, *Canaries*, *Madeiras*, *Weſtern Iſlands*, *Azores*, for every ton 12d. Such duties to be paid at the time of ſuch ſhip's diſcharge at the cuſtom-houſe, ſo as no ſhip ſhall be liable to pay the duty but on going the ſame voyage both out and home. S. 3.

All ſhips liable to the payment of the duties ſhall be meaſured, by taking the length of the keel as ſhe treads on the ground, and the breadth to be taken within board by the midſhip beam, from plank to plank; and half that breadth for the depth, then multiply the length by the breadth, and the product by the depth, and divide by 94. S. 4.

After the ſaid term of 21 years, there ſhall be paid to the mayor, &c. one fourth part of the duties before-mentioned, &c. S. 14.

Nothing in this act ſhall charge any ſhip which ſhall be forced into the harbour, and ſhall unlade in order to repair and relade: nor to charge any ſhip which ſhall ſell in the harbour any part of her lading, only in order to refit or victual. S. 16.

This act ſhall not charge any ſhip belonging to, or bound to or from the port of *Cheſter*, in caſe ſuch ſhip ſhall neither load nor diſcharge within the limits of the port of *Liverpool*. S. 17.

The act of 8 *Anne*, Cap. 12. for making a dock at *Liverpool*, and an act 3 *Geo.* I. *(not printed)* whereby the duties were further continued for fourteen years, are further continued for 31 years. 11 *Geo.* II. C. 32. S. 2.

Every ſhip trading from *Liverpool* to *Gottenburgh*, or any other place in *Sweden* without the *Baltick*, ſhall be charged with the duty of 8d. *per* ton. S. 10.

After the ſaid term of 31 years, ſo long as the dock and other works ſhall be kept in repair, there ſhall be paid to the mayor, &c. and their ſucceſſors, one fourth of the duties before-mentioned. S. 11.

DOVER *and* RYE.

No new walls or ſtops ſhall be ſet up that may hinder the flux and reflux of the ſea between the mouth of the harbour of *Rye* in *Suſſex*, bounded by two points called the *Camber* and *Caſtle Point*, *New Shut*, near *Craven Sluice* in *Suſſex* and *Kent*, &c. 7 *Geo.* I. C. 9. S. 1.

The duty of 3d. *per* ton, granted by 11 *Will.* III. Cap. 5. ſhall be appropriated for the benefit of the harbours of *Dover* and *Rye* in manner following, *viz.* one third thereof ſhall be paid to the treaſurer for *Dover* harbour, and the other two thirds to the treaſurer for the harbour of *Rye*. 9 *Geo.* I. C. 30. S. 2. *Vide Dover Harbour.*

The powers given by the act 9 *Geo.* I. Cap. 30. for reſtoring the port of *Rye*, are transferred to the warden of the cinque ports, the mayor and jurats of *Rye*, &c. 10 *Geo.* I. C. 7. S. 1.

Continued for 21 *years by* 11 Geo. II. *Cap.* 7. *Sect.* 1. *One moiety of the duties continued for* 21 *years by* 31 Geo. II.

WATCHETT.

The duties by the private act, 6 *Anne*, *for repairing the harbour and key of* Watchett, *in the county of* Somerſet, granted for 21 years, from the 25th of *March*, 1708, ſhall, after the expiration of the ſaid term, be paid for the further term of 21 years. 7 *Geo.* I. C. 14. S. 1.

Nothing herein ſhall diſcontinue the payment of the duties by the ſaid act, 6 *Anne*, made payable for the conſtant reparation of the key or harbour, after the expiration of the 21 years. S. 2.

BRIDPORT.

That the havens and piers of *Bridport*, in the county of *Dorſet*, may be rebuilt, and ſluices made, with convenient wharfs, the bailiffs and capital burgeſſes of *Bridport* ſhall be truſtees for the ſaid purpoſes; and at *Bridport* mouth, being an open piece of land, lying between the *Eaſt* and *Weſt* cliffs, and from the ſea northward as far as *Irepool*, on which ground the ancient harbour was, may lay out the new intended harbour and piers, and the ſluices, wharfs, and landing places, and the ways to the harbour. 8 *Geo.* I. C. 11. S. 1.

There ſhall be paid to the collector, to be appointed as herein after mentioned, for every weigh of ſalt, for every laſt of wheat, rye, barley, malt, or other grain, for every chaldron, *Wincheſter* meaſure, of coals and culm, and for every ton of other goods, diſcharged out of any ſhip in the ſaid haven, or which ſhall be exported from thence, 1s. to be paid before the ſame be landed; and there alſo ſhall be paid for every ſhip, of the burden of ten tons or upwards, which ſhall come into the ſaid haven, 2d. for every ton ſuch ſhip, &c. ſhall contain; which duties ſhall be paid by the maſter, &c. S. 4.

When the harbours and piers ſhall be rebuilt and the monies expended thereon reimburſed, the duties ſhall ceaſe; and from thenceforth there ſhall be paid to the collectors for every weigh of ſalt, for every laſt of wheat, rye, barley, malt, and other grain

and

and for every chaldron of coals and culm, *Wincheſter* meaſure, and for every ton of other goods diſcharged in the ſaid haven, or exported, 6d. and for every ſhip, &c. which ſhall come into the haven, 1d. *per ton* and no more. 8 *Geo.* I. C. 11. S. 7.

YARMOUTH.

After the 25th of *March*, 1723, for 21 years, and to the end of the next ſeſſion of parliament, there ſhall be paid by every maſter of a ſhip which ſhall unlade within the haven of *Great Yarmouth*, or in *Yarmouth Road*, extending from the ſouth part of *Scrathy* in *Norfolk* to the north part of *Corton* in *Suffolk*, at the time of unlading, for the goods following, viz. for every chaldron of coals, *Wincheſter* meaſure, laſt of wheat, rye, barley, malt, or other grain, for every weigh of ſalt, and ton of other goods (fiſh excepted) ſuch ſums, not exceeding 12d. as the mayor, aldermen, burgeſſes, and commonalty of *Great Yarmouth*, in common-council aſſembled, ſhall appoint; to be applied as follows, viz. part of the ſaid duties not exceeding 6d. towards clearing and improving the haven, piers, and jettees; and 3d. other part of the ſaid monies ſhall yearly, on the 24th of *June*, be divided in manner following, viz. One penny halfpenny to the chamberlain of *Norwich* to be applied towards clearing the channel of the river *Yare*, between the two mills in *Norwich* and *Hardly Croſs*, &c. and one halfpenny, other part of the ſaid 3d. to ſuch perſons as ſhall be yearly named by the juſtices at their quarter ſeſſions at *Norwich*, for the county *Norfolk*, to be applied towards clearing the river *Bure*, called the *North River*, and for ſuch other purpoſes as the juſtices ſhall appoint; and one halfpenny, other part of the ſaid 3d. to ſuch perſon as ſhall be yearly named by the juſtices at their quarter ſeſſions at *Beccles*, for the county of *Suffolk*, to be applied towards clearing of the river *Waveny*, and for ſuch other purpoſes as the ſaid juſtices ſhall order; and one halfpenny, reſidue of the ſaid 3d. to ſuch perſons as the mayor, &c. of *Yarmouth* ſhall appoint, to be applied towards repairing the bridge and the publick keys belonging to the corporation, &c. And the further ſum of 3d. or ſo much thereof as ſhall be by the twelve commiſſioners, to be appointed as herein after is directed, or any ſeven of them, thought neceſſary, ſhall be raiſed by the mayor, &c. of *Yarmouth*, and ſhall firſt be applied towards clearing the channel of that part of the river *Yare*, leading from *Yarmouth* to *Norwich*, called *Braydon*, as any ſeven of the commiſſioners ſhall direct at their meeting at *Yarmouth*, &c. 9 *Geo.* I. C. 10. S. 1.

The laſt mentioned 3d. ſhall not be raiſed but when notice in writing, ſigned by ſeven of the commiſſioners, ſhall be given to the mayor of *Yarmouth*, that it is neceſſary to raiſe the ſaid ſum, or ſome part thereof, and for what purpoſes; and then ſuch ſum ſhall be raiſed, provided that the juſtices for *Norfolk*, at their quarter ſeſſions, yearly, out of the monies payable for the river *Bure*, may allot part thereof for the clearing that branch of the river which leads from *St. Bennet's-Abbey* to *Dilham* in *Norfolk*. S. 2.

On the exportation of goods, which have paid the ſums thereby charged on the importation, the collector (proof in writing on oath being firſt made of the payment of the duties, which oath he may adminiſter) ſhall repay the exporter the money paid on the importation. S. 3.

The mayor of *Yarmouth* may yearly appoint watches or clappermen, to watch on the keys nightly, from the 1ſt of *November* to the 1ſt of *March*. S. 13.

There ſhall be paid by the maſter of any ſhip which ſhall lie in the haven, from the ſouth end of the *Ballaſt-key* upwards, the ſpace of one month between the 1ſt of *November* and the 1ſt of *March*, any ſum not exceeding one halfpenny *per* ton of the burthen, as the mayor ſhall, for the charges of ſuch watching, yearly appoint.—S. 14.

Every maſter, &c. of a ſhip, which ſhall winter in the haven, who ſhall ſuffer any fire or lighted candle to be in any ſhip lying from the ſouth end of the *Ballaſt-key* upwards (ſhips which ſhall have officers boarded on them by the direction of the ſuperior officers of the cuſtoms or exciſe, belonging to the ſaid town, only excepted) ſhall forfeit, for every ſuch fire or lighted candle, 10s. &c. S. 15.

The

The haven and piers of *Great Yarmouth* being in a bad condition, and falling into an irreparable decay, if not timely prevented, it is therefore enacted, that from and after the 24th of *June*, 1747, the ſeveral duties, which by 9 *Geo.* I. were granted for clearing and improving, &c. the haven and piers belonging to the ſaid town of *Great Yarmouth*, and for depthening the channel of *Braydon*, and for making the rivers *Yare*, *Waveny* and *Bure*, more navigable, and for repairing the bridge and public keys of the ſaid town, and alſo for preſerving ſhips wintering in the haven there, ſhall be reviewed and paid for the term of two years, and from thence to the end of the then next ſeſſion of parliament, in ſuch manner, by ſuch perſons, and with ſuch exceptions, allowances, and drawbacks, as are mentioned in the before recited act, &c. 20 *Geo.* II. P. 872, 875.

The proviſion made in the preceding act, not having been found ſufficient to anſwer the purpoſes intended thereby, for repairing the piers, clearing and depthening the haven of *Great Yarmouth*, &c. it is enacted that from the 25th of *March*, 1750, the duties payable by virtue of the foregoing act of 20 *Geo.* II. ſhall ceaſe: and, in lieu thereof, there ſhall be paid for twenty-one years, and from thence to the end of the then next ſeſſion of parliament, by every maſter of any ſhip or veſſel which ſhall import or unlade within the haven of *Great Yarmouth*, or in *Yarmouth Road*, near adjoining to the ſaid borough, extending from the ſouth part of the town of *Scrathy*, in the county of *Norfolk*, to the north part of the town of *Corton*, in the county of *Suffolk*: for every chaldron of coals, *Wincheſter* meaſure, laſt of wheat, rye, barley, malt, or other grain; and for every weigh of ſalt; and for every ton of all other goods or merchandizes (fiſh only excepted) the reſpective ſums following, viz. for the term of ſeven years, or ſuch other leſs term as twelve commiſſioners, or ſeven of them (five being commiſſioners, for the county of *Norfolk*, *Suffolk*, and the city of *Norwich*) ſhall order, a ſum not exceeding 1s. 6d. And after the expiration of the ſaid, or other leſs term of years, during the remainder of the term of twenty-one years, and from thence to the end of the then next ſeſſion of parliament, the ſum of 1od. or ſuch other greater ſum as the commiſſioners as aforeſaid ſhall order, not exceeding the ſum of 12d. 23 *Geo.* II. P. 189.

The ſum of 3d. part of the duties granted by this act ſhall every year be divided, and paid upon the firſt *Tueſday* in *June*, by the chamberlains, &c. of *Great Yarmouth*, in the manner and proportions following, viz. 1d. 2q. unto the chamberlain of the city of *Norwich*, &c. to be applied towards clearing and depthening that part of the channel of the river of *Wenſon*, commonly called *Yare*, which lies between the new mills in *Norwich* and *Hardly Croſs*; and for preventing filth and mud from falling therein, and for didelling and cleanſing the river in ſuch manner, as the ſaid corporation ſhall direct, &c. and the ſum of 2q. to be applied towards clearing and depthening the river *Bure* commonly called the *North River*, and all thoſe branches thereof, which lead from *St. Bennet's Abbey* in *Dilham*, and from *Baſtwick Bridge* to *Hickling*, in the county of *Norfolk*, in ſuch manner as the juſtices ſhall direct, &c. and the ſum of 2q. to be applied towards clearing and depthening the river *Waveny*, in ſuch manner as the juſtices ſhall direct, &c. and the ſum of 2q. reſidue of the ſaid 3d. to be applied towards repairing the bridge and public keys belonging to the ſaid borough of *Great Yarmouth*, &c. P. 193, 194.

The ſum of 3d. other part of the duties is to be divided and paid in the manner following, *viz.* the ſum of 2q. to be applied towards the further clearing and depthening the river *Bure*, commonly called the *North River*, and the branches thereof, which lead from *St. Bennet's Abbey* to *Dilham*, &c. and the ſum of 2d. 2q. reſidue of the ſaid 3d. to be applied towards the effectual clearing and depthening of that part of the river *Yare* leading from *Yarmouth* to *Norwich*, called *Braydon*, &c. P. 195.

The laſt mentioned ſum of 3d. is not to be raiſed, unleſs notice in writing, &c. be given to the mayor of *Great Yarmouth*, &c.

The laſt mentioned 3d. when raiſed, is to be annually accounted for, &c. and the overplus (if any) of the ſaid 2d. 2q. part of the ſaid 3d. is to be applied in clearing and depthening the *North River*, and its branches, &c. and the overplus (if any) of the 2d. 2q. reſidue of the ſaid 3d. is to remain in the hands of ſuch perſon as the corporation of *Great Yarmouth* in common council ſhall appoint, to be applied in clearing and depthening the channel of *Braydon*, in ſuch manner as the commiſſioners ſhall think fit. P. 196.

During

During the term of ſeven years, the ſum of 4d. other part of the duties is to be applied in clearing and depthening the haven, and repairing the piers and jettee, and all the capſterns, cables, and ropes belonging thereto, &c.

If in any year, during the ſaid term of ſeven years, the ſaid ſum of 4d. ſhall not be ſufficient for clearing and depthening the haven and repairing the piers and jettee, ſeven or more of the commiſſioners, &c. upon application of the corporation of *Great Yarmouth*, &c. are impowered to direct ſuch further part of the reſidue of the duties, as they ſhall think neceſſary to be applied, with the ſaid 4d. towards the ſaid purpoſes, and for no other uſe.

No part of the ſaid ſum of 4d. is to be applied in erecting any new works in the haven, or in pulling down any parts of the piers and jettee.

The ſaid ſum of 4d. and ſuch further ſums (if any) as the commiſſioners ſhall direct, to be applied as aforeſaid, are to be annually accounted for, &c. and the overplus (if any) is to be applied in amending and improving the haven and piers, &c. 23 *Geo.* II. P. 197.

During the ſaid term of ſeven years, or other leſs term, the ſum of 8d. or ſuch part thereof, as ſhall not have been diſpoſed of by the commiſſioners, in manner before directed, reſidue of the duties, is to be applied in improving and extending the haven and piers, and in erecting new works, as the commiſſioners as aforeſaid ſhall direct, according to the proviſions herein after mentioned.

Seven or more commiſſioners, &c. at their firſt, or ſome ſubſequent meeting, at *Great Yarmouth*, are to direct ſuch works to be undertaken, as, with the advice of ſome ſkilful engineer or engineers, they ſhall think neceſſary for improving and extending the haven and piers, &c. P. 198.

During the term of ſeven years, or other leſs term, the chamberlains of *Great Yarmouth*, &c. are to pay the money ariſing by the ſaid ſum of 8d. to ſuch perſons as the commiſſioners ſhall direct.

The ſurplus (if any) of the ſaid ſum of 8d. is to be applied in completing ſuch new works, as the commiſſioners ſhall direct.

If at any time, before the expiration of the ſaid term of ſeven years, the commiſſioners ſhall ſignify to the mayor, &c. that, in their opinion, the work is completed, and the haven and piers effectually improved and extended, then the payment of the ſum of 8d. is to ceaſe, except in the caſe herein after excepted. P. 200.

After the expiration of the ſaid term of ſeven years, or ſooner determination of the payment of the ſaid ſum of 8d. the ſum of 4d. part of the remaining duty is to be applied, during the remainder of the term of twenty-one years, and from thence to the end of the then next ſeſſion of parliament, in clearing and depthening the haven, and keeping in repair the piers and jettee, in ſuch manner as the corporation of *Great Yarmouth* in common council ſhall direct.

If in any year, during the remainder of the ſaid term of twenty-one years, &c. it ſhall appear to ſeven or more of the commiſſioners, &c. that the ſaid ſum of 4d. directed to be applied in clearing and depthening the haven, and keeping the piers and jettee in repair, will not be ſufficient for thoſe purpoſes, they may direct a further ſum, not exceeding 2d. to be raiſed until their next annual meeting, to be applied by the corporation of *Great Yarmouth*, in repairing and improving the haven, &c. in ſuch manner as the commiſſioners ſhall judge neceſſary, &c. P. 201.

The ſaid further ſum of 2d. or any part thereof, is not to be raiſed unleſs notice that the ſame is neceſſary, &c. be firſt given to the mayor, &c.

The collectors and receivers may, at all ſeaſonable times, enter into any veſſel, within the haven or road, in order to ſee what goods ſhall be on board, before the unlading thereof; and, if the duties ſhall not be paid by the maſter upon the unlading, they may by warrant from the mayor, or deputy mayor of *Great Yarmouth*, diſtrain the veſſel, her apparel, and furniture, and, after ten days, ſell the ſame, rendering the overplus upon demand, after deducting the duties and all charges.

Such fiſh-oil, or fiſh livers, as ſhall be obtained in any fiſhing voyage, and ſuch remainder of ſalt, bread, beer, and other proviſions, as ſhall be taken into any veſſel for accompliſhing a fiſhing voyage, or into any veſſel for the maintenance of the ſhip's crew, upon a voyage to be made with ſuch veſſel, and not ſpent therein, are exempted from the ſaid duties.

On

On the re-exportation of all coals and other goods, for which the duties of this act, on the importation, ſhall have been paid, any collector or receiver of the duties (upon proof made before him in writing, upon oath, of the payment of the ſaid duties, and which oath he is to adminiſter) is to repay, out of the monies in his hands, &c. all ſuch duties to the re-exporter, as ſhall have been paid on the importation.

From and after the 25th of *March*, 1750, no veſſel is to lie, or be moored, with her ſide towards the key, longer than one tide, unleſs upon ſome unavoidable occaſion: And the mayor, or deputy mayor, is to take ſuch order therein, as he ſhall think reaſonable; and if any maſter ſhall refuſe to obey ſuch order, for altering the ſituation of his ſhip, and laying her head towards the key, he is to forfeit 40s. &c. 23 *Geo.* II. P. 207, 209.

MARGATE.

The droits called poundage and laſtage, and other duties, ſhall be continued for the maintenance of the pier and harbour of *Margate*. 11 *Geo.* I. C. 3. S. 1.

It ſhall be lawful for the pier-wardens and collectors, to go on board any veſſel belonging to *Margate*, making uſe of, or being within the harbour, and to take account what duty is payable for any goods on board; and, in caſe of non-payment, to diſtrain ſuch goods, and alſo the tackle of the veſſel: And, in caſe of neglect of payment by the ſpace of ten days, they may ſell the goods to ſatisfy as well the duty as the charges, &c. S. 6.

The money ſhall be laid out in repairing the pier and harbour. S. 8.

SUNDERLAND.

The commiſſioners appointed to put in execution the *private* act 3 *Geo.* I. *for the preſervation and improvement of the river* Wear *and port and haven of* Sunderland, *in the county of* Durham, or any ſeven of them, (whereof the chairman to be one) are impowered, at any publick meeting, to grant or charge the duties by that act granted, as a ſecurity for 3500l. by them already borrowed, or for any further ſum to be borrowed for the purpoſe in the ſaid act. 13 *Geo.* I. C. 6. S. 1.

The commiſſioners ſhall have power to finiſh the pier already begun, and alſo to erect piers and other works, for the preſervation and improvement of the haven, &c. S. 8.

The preamble ſets forth, that the town of *Sunderland*, near the ſea, ſituate on the river *Wear*, in the county of *Durham*, is well inhabited by rich and able merchants and tradeſmen, having a port capable of containing many hundred ſhips at one time, &c. and that by an act of 3 *Geo.* I. intitled *An act for the preſervation and improvement of the river* Wear, *and port and haven of* Sunderland *in the county of* Durham, certain perſons therein named, were appointed commiſſioners of the ſaid river and haven, and duties granted for the effectual cleanſing and preſerving thereof, for the term of twenty-one years; and that by another act of 13 *Geo.* I. *for the more effectual preſervation and improvement of the river* Wear, &c. divers additional powers were granted to the ſaid commiſſioner, who in purſuance of the execution thereof, before the expiration of the term limited, erected, at a great charge, a pier and a key near the mouth of the river on the ſouth ſide, and did other beneficial acts for the opening and improving of the ſaid river, &c. and, in order to have more effectually cleanſed and preſerved the ſame, the commiſſioners propoſed to have lengthened the ſaid pier, and to have built other works on the north ſide of the river, but the money ariſing from the duties not being ſufficient to perform ſuch additional works, &c. *It is enacted*, that the right reverend the biſhop of *Durham*, the right honourable *Thomas*, earl of *Scarborough*, &c. ſhall be commiſſioners of the ſaid river, port, and haven, within the limits herein-after ſet forth, and ſhall be ſo called

called for the purpoſes herein mentioned, for the term of twenty-one years, to commence from the 24th of *June*, 1747. 20 *Geo.* II. P. 479, 480, 481, 482.

The commiſſioners, or ſeven of them, may purchaſe and take leaſes of any lands near the ſaid river, for the erecting piers or other works, &c. and employ workmen, keels, &c. to remove any rocks, gravel, &c. below high water marks, &c. provided that thereby they do not damage the lands, quarries, keys, ſtraits, wharfs, or beacons, of any perſon whatſoever, &c.

The commiſſioners, or ſeven of them, may at all times hereafter ſurvey the ſaid river ſo far as to the *New Bridge*, and no farther; (to which place they may make and keep it navigable for the ſaid term of 21 years) and alſo the port, haven, and harbour of *Sunderland*, as far as the ſame extends from *Souter Point*, about two miles from the bar of *Sunderland*, towards the north eaſt, and ſo into the ſea to five fathoms at low water, and from thence in a ſuppoſed direct line, till it falls oppoſite to that land called *Ryhop Dean*, about two miles towards the ſouth, and the impediments and annoyances, &c. therein, and may hear and determine all ſuch abuſes, differences, and things, as concern the ſame, &c. P. 490.

The commiſſioners, before the 24th of *June*, 1759, ſhall remove all ſands, ſhoals, and other obſtructions, between *Biddiſford* and *Newbridge*, and ſhall effectually make the ſaid river navigable, to carry boats, keels, and veſſels of the burden now uſed upon the ſaid river; and ſhall, from time to time, keep it ſo navigable, between the ſaid two places, for the reſidue of the ſaid term of 21 years. P. 491.

From the 24th of *June*, 1747, for the term of 21 years, and from thence to the end of the then next ſeſſion of parliament, every coal-owner, for the time being, and their fitters, and coal-factors, ſhall ſeverally pay for all coals and cinders brought to the ſaid river, and delivered from the ſtaith, aboard any ſhip or other veſſel, the ſums following, viz. P. 498.

The coal owners reſpectively, any ſum not exceeding 2d. 2 q. for every chaldron of coals or cinders, during the ſaid term of 21 years, brought for them to the river, and delivered as aforeſaid; and ſo in proportion for any greater or leſs quantity.

And the fitters or coal-factors reſpectively, any ſum not exceeding 2q. during the ſaid term, for every chaldron of coals or cinders, brought and delivered as aforeſaid, to be applied as herein-after directed.

The commiſſioners, or ſeven of them, (whereof the chairman for the time being to be one) at any public meeting by writing under their hands and ſeals, (without any ſtamp thereon) may aſſign over, &c. the duties, or any part thereof (the charge of making ſuch aſſignment to be paid out of the duties) for all, or any part of the term for which they are granted, as a ſecurity for any ſum to be borrowed for the purpoſes herein mentioned, to ſuch perſon or perſons, or their truſtees, who ſhall lend the ſame, with intereſt not exceeding 5l. *per centum per annum*; out of which monies, &c. ſhall be paid, in the firſt place, the charges of obtaining and endeavouring to procure this act. P. 559.

Cinders to be burnt from coals, ſubject to the duties beforementioned, ſhall not pay the duties payable for cinders, on their being put on board any ſhip or other veſſel, in order to their being exported or water-borne to any other place; and no duty ſhall be paid for any coals or cinders that ſhall be loſt in any keel or boat ſunk in the ſaid river, &c. or within five fathoms, at low-water, beyond the bar of the river; or for any coals uſed in making ſalt, and glaſs, glaſs bottles, vitriol, and burning lime-ſtones into lime, within the limits of the ſaid river, &c. ſo as the owners and conſumers thereof (being required) by the oath of themſelves, or any other perſon, to the ſatisfaction of the commiſſioners, &c. prove that ſuch cinders, ſo exempted, were burnt from coals, for which duties, as aforeſaid, had been paid; or that ſuch coals or cinders, ſo exempted, were loſt, as aforeſaid; or that the coals, ſo exempted, had been uſed in making ſalt, &c. within the ſaid river, port, or haven. And if any ſtaithmen, &c. (ſummoned to appear and to be examined on oath, touching the quantities of coals and cinders by them delivered, from time to time, on board) ſhall not appear, or refuſe to be examined on oath, they ſhall be charged ſuch ſums, &c. P. 500.

All

All duties, fines, and ſums of money, to be levied by this act, not otherwiſe directed to be applied, ſhall be paid to ſuch perſons as the commiſſioners ſhall appoint; and ſuch money, or ſo much as ſhall not be applied towards payment of the charges of procuring this act, and of the principal and intereſt of the money borrowed, and the expence of putting this act in execution, ſhall be employed in lengthening the preſent pier, and in purchaſing or procuring leaſes of grounds, as aforeſaid, to build any other piers, keys, walls, or jettees on, in erecting the ſame, and in doing ſuch other works for the improvement of, and the depthening, cleanſing, and preſerving the ſaid river, &c. as the commiſſioners, &c. ſhall from time to time direct.

If by the building of any pier, or other works, and the different direction thereby given to the ſea and tide flowing into the river, &c. the keys and grounds of any perſon ſhall be beat down, overflowed, or otherwiſe damnified, the commiſſioners, &c. out of the monies ariſing by this act, ſhall cauſe ſuch keys to be repaired, or rebuilt, and the land to be effectually ſecured againſt ſuch ſea and tide, within twelve months after any ſuch accident; and ſhall likewiſe cauſe to be paid to the proprietors of lands and grounds, or to ſuch other perſons as ſhall make proof of any damages done by them, in the execution of this act, ſuch ſums as ſhall be aſſeſſed by a jury, &c.

NEWHAVEN.

That the haven and pier of *Newhaven* in *Suſſex* may be rebuilt, *John Alford*, Eſq. and others are conſtituted commiſſioners; and it ſhall be lawful for them to lay out the ſaid harbour and pier. 4 *Geo.* II. C. 17. S. 1.

There ſhall be paid the ſums of money following, viz. For every chaldron of coals, grindſtone, and other goods, paying duty by the chaldron, exported or imported, in the ſaid haven, 1s. For every ton of coals, paying duty by the ton, ſalt, plaiſter of *Paris*, tarris, tobacco-pipe clay, ſtone, and marble blocks, lead, iron, or other goods, paying duty or freight by the ton, 1s. For every load of timber, wainſcot boards, trenels, and all other converted timber, 1s. For every load of tan or bark, 2s. For every hundred of ſingle deals, ſpears, ufirs, pipe, hogſhead, and barrel ſtaves, 1s. For every hundred of double deals, 2s. and of 3 inch deals, 3s. For every quarter of wheat, peas, tares, beans, and all heavy ſeeds, 3d. For every quarter of barley, malt, oats, ſainfoin, and light grains, 2d. For every hogſhead of wine, and other liquids, 6d. For every hogſhead of ſugar, tobacco, and dry goods, 9d. and for every tierce thereof, 9d. For every barrel of pitch, tar, groceries, and all other goods in barrels, 4d. For every bundle, bale, and cheſt of hemp, linens, woollens, glaſs, fruits, earthen ware, not exceeding three hundred weight, 3d. For every hundred weight of allum, cheeſe, tallow, colours, ſhot, nails, chains, and wrought-iron, braſiers' and pewterers' wares, and all other goods paying duty or freight, *per* hundred weight, 1d. For every groſs of bottles, 3d. For every hundred feet of paving ſtones, or paving marble, 2s. For every thouſand of tiles, bricks, and clinkers, 1s. For every ſhip (fiſhing veſſels excepted) that comes to load or unload, 2d. *per* ton, according to their light bills; for every veſſel that comes in, and neither loads nor unloads, 2s. each, from twelve to fifty tons, and if above fifty tons, 4s. For all goods not enumerated, one twelfth part of the uſual freight from *London* to *Newhaven*. S. 2.

Which duties ſhall be paid by the perſon who ſhips or receives goods, the maſter to pay the tonnage of the ſhip; and no officers of cuſtoms of the port of *Lewes* ſhall take entries, or make out cockets, for ſhipping or diſcharging goods, or for clearing any ſhips, until the duties be paid, or ſecurity given; or ſhall permit any ſhip to go out of the haven, until the maſter produces a receipt for the duties aforeſaid. S. 3.

The collectors may go aboard and diſtrain for non-payment, and, in caſe of neglect for ten days, may ſell ſhip and furniture. S. 4.

When the juſtices, at their quarter ſeſſions for *Suſſex*, ſhall certify, that the commiſſioners are reimburſed, one half of the duties ſhall ceaſe, and the other half ſhall continue, for keeping the haven, pier, and ſluices in repair. S. 6.

ILFORD.

ILFORDCOMBE.

The ſeveral duties following ſhall be paid to Sir *Bouchier Wray*, his heirs and aſſigns, lords of the manor of *Ilfordcombe*, in the county of *Devon*; (the greateſt) part of which acknowledgments were anciently paid to the lords of the manor. (4 *Geo.* II. C. 19. S. 1.) viz.

For woollen, and bay yarn, and flocks, 2d. *per* ſtone, each to contain 18lb. and ſo every ton of other goods, imported or exported out of the ſaid port 8d. S. 2.

For every ſhip which ſhall come into the ſaid harbour (the ſame not being their diſcharging port) the keelage following, viz. For every ſhip uſing the coaſting trade, belonging to the ſaid port, 6d. for every ſhip not belonging to the ſaid port, uſing the coaſting trade, 1s. 6d. for every other ſhip coming from his majeſty's plantations, or bound thither, 2s. 6d. the maſter paying the ſaid duty of keelage, ſhall have allowance of the merchant by way of average; for every ſhip that pays keelage, there ſhall be paid by the maſter 6d. for each top which ſuch veſſel beareth; and for the keelage of every boat belonging to any other port or place, 4d. S. 3.

For the ſupport of the light-houſe (which light ſhall be ſet up at *Michaelmas* and continue till the 1ſt of *March*, in every year) there ſhall be paid, during ſuch ſeaſon, by every ſhip belonging to the ſaid port, 6d. and by every other ſhip 1s. S. 4.

And for laying up, or leeſing of ſhips in the harbour, and to the fiſhery, there ſhall be paid the duties following, viz. For every ſhip belonging to the harbour 4s. 4d. for every other ſhip 6s. 8d. for every boat employed in the herring fiſhery, 4s. 4d. for every boat fiſhing for mackrel, for the ſeaſon 4s. 4d. For every barrel of herrings 4d. And for every horſe-load of goods imported and exported 3d. S. 5.

For the keeping of a taw-boat there ſhall be paid ſuch duties, and ſuch orders obſerved, as follows: Firſt, the owner of ſuch taw-boat ſhall have for going to any ſhip, three ſhares; and the owner of the boat and company ſhall have one third of every pilot ſhip; the owner of ſuch port to have his part, whether the pilot be ſhipped within the harbour or without; and the keeper of ſuch boat ſhall have one man's ſhare; and no boat ſhall ſerve, but ſuch taw-boat only, which is to attend the place; and, if any other boat ſhall ſerve, the owner of ſuch boat ſhall forfeit 6s. 8d. unleſs upon extremity of weather, then the owner of the taw-boats ſhall appoint other boats to aſſiſt him; and the owner of ſuch taw-boat ſhall have from every ſuch ſpecial boat, one ſhare, and the keeper of the taw-boat ſhall attend, and keep the boat and warp always in readineſs. S. 6.

There ſhall be paid by the maſter of every veſſel belonging to *Ilfordcombe*, who ſhall uſe the warp, 6s. 8d. and by the maſter of every veſſel belonging to any other port, 13s. 4d. S. 7.

For keeping weights in the harbour, by the ſaid Sir *Bourchier Wray*, his heirs and aſſigns, the orders herein after mentioned ſhall be obſerved, viz. No perſon ſhall weigh any goods, bought or ſold there, with any other weights; and if any perſon ſhall weigh with other weights, ſuch perſon ſhall forfeit 3s. 4d. and there ſhall be paid for every ton ſo weighed 2d. S. 8.

There ſhall be paid for every dicker of leather there landed 3d. for every hogſhead of tobacco 3d. for every weigh of coals or culm 6d. for every horſe 1d. for every bullock 2q. for every ſcore of ſheep 4d. for every dozen of earthen ware, imported or exported 2q. for every meaſe of herrings unſalted, carried out of the port 3d. for every ton of ballaſt taken on board in the port 2d. for every ton of lime-ſtone landed in the harbour 1d. for every ton of groceries, or ſaltery wares, 1s. 6d. for every hundred of barrel ſtaves, 4d. for every bundle of hoops, 2q. for every pack of bays or ſtuff 3d. and for every hundred weight of cheeſe 2d. and for the leeſing or laying up of every ſuch fiſhing-boat as ſhall not pay duty 2s. 2d. S. 9.

And for all other goods, not particularly mentioned, imported or exported, ſuch ſums of money ſhall be collected, as duties appertaining to the ſaid key, light-houſe, and warp-houſe, according to ſuch moderate values, as are proportionable to the rates above expreſſed, and as are paid in the adjacent ports. S. 10.

All money raiſed by the duties, or recovered by forfeitures, ſhall be laid out in repairing and maintaining the piers, key, light-houſe, warp, warp-houſe, boats, and harbour of *Ilfordcombe*. S. 13.

The water bailiff hath power to go aboard ſhips, and to diſtrain for non-payment, and, after ten days, to ſell the diſtreſs and ſatisfy the duties, penalties, and coſts. S. 16.

Nothing in this act ſhall diminiſh any of the ancient rights which the freemen for *Bridgwater* have enjoyed by virtue of a charter granted by king *John*. 4 *Geo.* II. C. 19. S. 17.

SCARBOROUGH.

The king erected a corporation of two perſons, called, *the maſters, or keepers, of the key or pier of* Scarborough. 37 *Hen.* VIII. C. 14. S. 1.

The maſter and keepers ſhall receive of the owners of tenements in *Scarborough*, the fifth part of the yearly rents, for the maintenance of the key or pier, at the feaſt of *Pentecoſt* and *St. Martin*. S. 5.

From the 24th of *June*, 1732, until the 24th of *June*, 1763, the duties after-mentioned ſhall be paid, for the enlarging and keeping in repair the piers of *Scarborough*, to wit, 2q. for every chaldron of coals laden on board any ſhip in the port of *Newcaſtle*, or any member of the port of *Newcaſtle*; which duties ſhall be paid to the bailiffs and burgeſſes of *Scarborough*, as they in common council aſſembled ſhall appoint, by every maſter of a ſhip, before ſuch ſhip be ſuffered to proceed in any voyage, to be paid near the place where ſuch ſhip ſhall take on board ſuch coals. 5 *Geo.* II. C. 11. S. 1.

Till the 24th of *June*, 1783, there ſhall be paid to the ſaid bailiffs and burgeſſes for coals landed within the port of *Scarborough*, 1s. *per* chaldron, town's meaſure; for cinders 1s. per chaldron, for every weigh of ſalt 2s. for every groſs of glaſs bottles 2d. for fir timber imported in *Engliſh* bottoms 3d. *per* ton; for every hundred of fir deals 3s. of half deals 1s. 6d. of middle balks 3s. of double ufirs 3s. of ſingle ufirs 1s. of capraevens 3s. of ſmall balks 1s. of ſmall ſpars 6d. of battins 1s. of pale-boards 2d. great maſts a-piece 3s. middle maſts a-piece 1s. 6d. ſmall maſts a-piece 6d. oak timber and oak plank *per* ton 3d. wine and brandy *per* ton 5s. and for all the above enumerated goods, which ſhall be imported in foreign bottoms, double duties; and for all foreign goods not above-mentioned, imported in *Engliſh* bottoms, 3d. *per* ton, and for foreign bottoms 6d. *per* ton; and for butter ſhipped off from *Scarborough* 1d. *per* firkin; for dried fiſh and mud fiſh ſhipped off 2d. *per* ſcore; for barrel fiſh ſo ſhipped off *per* barrel 4d. for tallow ſo ſhipped off 3d *per* hundred weight; every ham of bacon 2d. neats tongues *per* dozen 3d. pickled pork *per* barrel 1s. for every flitch of bacon 2d. rabbit-ſkins *per* pack 2s. 6d. calves' ſkins *per* dozen 3d. leather *per* hundred weight 1s. and for every *Engliſh* ſhip which ſhall enter within the piers 6d. and for the top, or croſs trees, of ſuch *Engliſh* ſhip, being of the burthen of 130 tons 4d. and for every foreign ſhip ſo entering 1s. and for the top, or croſs trees, of ſuch foreign ſhip of 130 tons, 8d. S. 3.

In default of payment it ſhall be lawful for the collectors to diſtrain. 5 *Geo.* II. C. 14. S. 5.

All ſhips within the port of *Scarborough* ſhall lie, moor, and ballaſt, in ſuch place as they ſhall be directed, under penalty of 5l. &c. S. 17.

The ancient toll for ſupporting the piers ſhall be paid. S. 19.

All ſhips *Britiſh* built, and manned according to the act of navigation, belonging to *Great Yarmouth*, ſhall be free from the ſaid duty of 2d. *per* chaldron of coals, ſo as the maſter, or ſome mariner on his behalf, produce a certificate, made upon oath before the mayor of *Yarmouth*, and under the ſeal of mayoralty, that ſuch ſhip does belong to *Yarmouth*, and that the inhabitants thereof are owners of the major part of ſuch ſhip. S. 20.

By this act truſtees are appointed to put the then act in force, in the room of the bailiffs and burgeſſes of *Scarborough*. No perſon is to empty any ballaſt, rubbiſh, duſt, aſhes, earth or ſtones, into the harbour, or lay any logs, or floats of timber, or other materials, to ſet up any ports, or encroach on the harbour to the annoyance thereof, on pain of a fine to be levied by order of any two of the commiſſioners, not exceeding 5l. to be applied to the uſe of the harbour. On non-payment, the offender to be committed to the county gaol till paid, or compounded with five of the commiſſioners. 25 *Geo.* II.

ARUNDEL.

The mayor of *Arundel* and others are appointed commiſſioners to improve and preſerve the harbour of *Arundel*; and it ſhall be lawful for the commiſſioners, or any nine of them, to erect piers and other works. 6 *Geo.* II. Cap. 12. S. 1.

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There ſhall be paid to the commiſſioners the duties following, viz. for every chaldron of coal, grindſtones, or other goods paying duty to the king by the chaldron, which ſhall be exported or imported in the ſaid port, 1s. for every ton of ſalt and other goods paying duty or freight by the ton, 1s. for every load of timber, wainſcot, trenals, or other converted timber, 1s. for every load of bark, 2s. for every hundred of ſpars, ufirs, pipe, hogſhead, or barrel ſtaves, 1s. for every hundred of ſingle deals, 1s. 6d. of double deals 2s. of three inch deals 2s. 6d. for every quarter of wheat, clover, and other grains and ſeeds, 3d. for every load of flour and meal 1s. and of bran 6d. for every hogſhead of wine or other liquors 1s. of ſugar and dry goods, 9d. for every tierce thereof 6d. and for every barrel of pitch, or other goods, 4d. for every bundle, bale, and cheſt of hemp, linen, woollen, glaſs, fruits, and earthen ware, 1d. *per* hundred weight; for every hundred weight of allum, and goods paying duty or freight *per* hundred weight 1d. for every hundred feet of paving ſtones or marble 2s. for every thouſand of tiles, bricks, or clinkers, 1s. for every groſs of bottles, ſtone, or glaſs, 3d. for every barge, or other craft, paſſing through each lock, 1s. for all goods not enumerated, one-twelfth of the uſual freight from *London* to *Arundel*; for every *Britiſh* ſhip which ſhall lade or unlade (fiſhing veſſels excepted) 3d. per ton, according to their light bills; for every *Britiſh* ſhip, which ſhall ſail into the harbour, and ſhall neither lade nor unlade there, 1d. 2q. *per* ton; for every foreign ſhip and for all goods, imported or exported in foreign bottoms, double duties. 6 *Geo.* II. C. 12 .S. 2.

No ſhip ſhall be cleared at the cuſtom-houſe, till the maſter produces a certificate that the duties are paid or ſecured, &c. S. 3.

When it ſhall appear to the juſtices, and be certified by them, that the commiſſioners are reimburſed the monies borrowed, one-half of the duties ſhall ceaſe.

All ſhips in the port of *Arundel* areto moor and ballaſt in ſuch places as the maſters ſhall be directed, &c. S. 10.

This act ſhall be a public act, &c. S. 15.

River Dee *at* CHESTER.

By an act made 6 *Geo.* II. intitled, *An act to recover and preſerve the navigation of the river* Dee, *in the county Palatine of* Cheſter; reciting that, by an act made 11 and 12 *Will.* III. intitled, *an act to enable the mayor and citizens of* Cheſter *to recover and preſerve the navigation of the river* Dee, reciting, that the ſaid river *Dee*, was heretofore navigable for ſhips of a conſiderable burden, from the ſea to the city of *Cheſter*, but, by neglect, and for want of ſufficient banks and fences on the ſides thereof, againſt the flux and reflux of the ſea, the channel was become ſo uncertain, that the navigation was almoſt loſt; the mayor and citizens of *Cheſter*, and their ſucceſſors, were empowered to make the ſaid river navigable from the ſea to the ſaid city, for ſhips of one hundred tons or upwards; and certain duties in the ſaid act mentioned were laid upon coals, lime, and limeſtones, brought to the ſaid city, for the term of twenty-one years, and the property of the ſands, ſoil, and ground therein mentioned, was immediately, after the ſaid river and channel ſhould be made navigable for ſuch ſhips to and from *Cheſter*, to be veſted in the mayor and citizens, and their ſucceſſors, for ever; and they were at liberty to encloſe and improve the ſame, and receive the profits thereof, and apply the ſame for maintaining and repairing the intended works and fences, and for making ſuch further works, from time to time, as occaſion ſhould require, for making and keeping the ſaid river navigable; *And reciting*, that ſeveral conſiderable ſums had been laid out purſuant to the ſaid act, but the river was not made navigable, the proviſions for making it ſo being inſufficient, and the time thereby granted, for making the ſame navigable, was expired: *And reciting*, that the ſands, ſoil, and ground, not bearing graſs, commonly called the *White Sands*, from *Cheſter* to the ſea, and lying between the county of *Cheſter*, on the north ſide, and the county of *Flint* on the ſouth, are of great breadth in moſt places; and that the river not being navigable was chiefly owing to the breadth of the ſands, and to the ſhifting of the channel, as the winds and tide varied; and that the ſaid ſands, ſoil, and ground were not, nor were likely to be, of any benefit to any perſon whatſoever, unleſs the river was bounded in, and made navigable by ſea walls,

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which required a very great expence, as well to erect, as to maintain and repair from time to time, as occaſion ſhould require; but that yet, if the ſaid ſands, ſoil, and ground, were recovered from the ſea, by ſea walls, and the channel thereby confined to one certain courſe, it would not only effectually make the river navigable, but that veſting the *White Sands* in the undertakers, would be a conſiderable encouragement to the undertaking thereof: *And reciting*, that the making the ſaid river navigable would be a means to advance the trade of the city, and that a great benefit would accrue thereby to the inhabitants, and to the towns and countries adjacent, as alſo be a means to increaſe the number of ſeamen and watermen, and to promote the public good of this kingdom; *Nathaniel Kinderley*, in the ſaid act named, his heirs, and aſſigns, and ſuch perſons as he, &c. ſhould appoint, were by the ſaid act of 6 *Geo.* II. appointed undertakers of the ſaid navigation, and impowered at their own charges, to make and keep the ſaid river *Dee* navigable from the ſea to *Wilcox*, *Point*; that there ſhould be ſixteen feet water in every part of the river at a moderate ſpring tide, for ſhips to come and go to and from the ſaid city; and to that end, to make the channel to run through the *White Sands*, or the common ſalt marſhes adjoining, or through the marſhes of *John Wright*, Eſq; commonly called *Brewer's-hall marſh*, as they would think fit; and the ſaid *Nathaniel Kinderley*, his heirs, aſſigns, and nominees, had farther powers granted them by the ſaid act, as therein mentioned. And as they would neceſſarily be at a very conſiderable expence in making the river navigable, and keeping up the ſame, it was by the ſaid act of 6 *Geo.* II. enacted, that immediately after the ſaid *Nathaniel Kinderley*, his heirs, aſſigns, or nominees, ſhould make the ſaid river *Dee* navigable and paſſable for ſhips in manner as aforeſaid, all merchants and proprietors of any goods that ſhould be brought into the ſaid river and channel, and that ſhould be laden at, or ſhipped off, or ſent from *Cheſter*, or from any other places between the ſaid city and *Park-gate* in the county of *Cheſter*, on the north ſide of the ſaid river, and between the city of *Cheſter* and town of *Flint* in the county of *Flint*, on the ſouth ſide of the ſaid river, ſhould pay to the ſaid *Nathaniel Kinderley*, his heirs, &c. the ſeveral duties in the ſaid act mentioned; alſo certain ſands, marſhes, and ſalt graſs, and other lands therein mentioned, were, ſo ſoon as the ſaid river was made navigable, veſted in the undertakers, for their proper uſe, under the proviſos in the ſaid act mentioned; and commiſſioners were appointed by the ſaid act, for ſettling all matters, about which any difference ſhould ariſe between the undertakers and proprietors of any of the lands adjoining to the river; and the commiſſioners were thereby empowered to ſettle and aſſeſs recompence to be made for damages that might happen to any of the lands or fiſheries, by reaſon of the ſaid navigation: And the undertakers were directed to inveſt 1000l. in *South Sea* annuities, or other government ſecurities, in the name of *Thomas Revel*, *John Manley*, and *Benjamin Hoare*, Eſqrs. and *John Bland*, banker, to anſwer the damages laſt mentioned, for three years after the navigation ſhould be fully completed: And it was thereby alſo enacted, that if the ſaid undertakers ſhould not begin before the 24th day of *June*, 1735, and make the ſaid river navigable, according to the true meaning of the act, on or before the 24th day of *June*, 1742, all and every the powers and intereſt of the ſaid *Nathaniel Kinderley*, his heirs and nominees, ſhould be utterly void; and that it ſhould not be lawful for any proprietor or undertaker, or their heirs, or any perſons claiming under any of them, to diſpoſe of their intereſt in the ſaid undertaking, or any ſhare thereof, until ſuch time as the ſaid river ſhould be made navigable: And the ſaid *Nathaniel Kinderley* did afterwards, by an inſtrument in writing, dated the 9th day of *July*, 1733, and duly executed, declare, that his name was made uſe of in the ſaid act of 6 *Geo.* II. in truſt for *Thomas Watts* and *Richard Manley*, Eſqrs. and ſuch other perſons as they ſhould appoint to be concerned in the ſaid undertaking; and the ſaid *Nathaniel Kinderley* did afterwards duly nominate certain perſons, being forty in number, to be undertakers of the navigation: And by indenture quadrupartite, made *April* 9, 1734, between *Nathaniel Kinderley*, of the firſt part, *Thomas Watts* and *Richard Manley* of the ſecond part, *Joſeph Davies* and *William Parſons* of *London*, gentlemen, of the third part, and ninety other ſubſcribers to the ſaid indenture, or to the ſchedule thereof, of the fourth part, and duly executed by all the ſaid parties; it was agreed, that the ſaid ſubſcribers ſhould raiſe a joint ſtock of 40,000l. in the manner and on the truſts therein mentioned; which truſts were, amongſt other

other things, to lay out the 1000l. to be depoſited as a fund to anſwer the damages before ſpecified; and alſo to lay out ſuch ſums as ſhould be neceſſary to recover and preſerve the navigation of the river *Dee*; and the reſidue (if any) of the ſaid 40,000l. was to be in truſt for the ſaid ſubſcribers, in proportion to the ſums by them reſpectively paid in: And it was by the ſaid indenture further agreed, that the duties and tonnage by the ſaid act made payable to, and the ſands, ſoil, ground, marſhes, and ſalt graſs, thereby veſted in the ſaid *Nathaniel Kinderley*, his heirs, &c. ſhould remain to the uſe of the ſaid ſubſcribers in proportion to the ſums by them reſpectively paid: It was alſo agreed, that the ſaid joint ſtock of 40,000l. ſhould be divided into 400 ſhares, each conſiſting of 100l. and that each of the ſubſcribers ſhould be entitled to ſo many ſhares as he ſhould have ſubſcribed and paid in 100l. and ſeveral proviſions were made for the management of the undertaking, for recovering and preſerving the navigation, and of the affairs relating thereto. And the ſaid undertakers, the aſſigns or nominees of the ſaid *Nathaniel Kinderley*, between the 27th of *Auguſt* and 9th of *November*, 1735, did inveſt 10,000l. in the purchaſe of 9290l. old *South-Sea* annuities, in the names of *Thomas Revel*, *John Manley*, *Benjamin Hoare*, and *John Bland*, as truſtees for the purpoſes in the ſaid act mentioned; and the ſaid *Benjamin Hoare* afterwards refuſing to accept the ſaid ſtock in the *South Sea* company's books, or to act in the ſaid truſt, the annuities were in purſuance of a decree of the high court of Chancery, made the 18th day of *February*, 1737, transferred into the names of *Thomas Revel*, *John Manley*, and *John Bland*, upon the ſame truſts: And the undertakers began the ſaid undertaking before the 24th day of *June* 1735, and laid out the monies advanced upon the ſaid indenture, in making the depoſit of 10,000l. in *South Sea* annuities, &c. and great progreſs was thereby made in recovering the ſaid navigation; but the ſame not being perfected, and it being neceſſary to raiſe further monies for that purpoſe, it was by deed-poll, bearing date the 17th day of *Auguſt*, 1736, agreed to advance 10 *per cent.* more, on each of their reſpective ſubſcriptions, for the purpoſes in the ſaid indenture expreſſed concerning the ſaid 40,000l. And afterwards there being a neceſſity to raiſe further monies for the perfecting the navigation, by another deed-poll bearing date *March* the 3d, 1736, it was agreed by the ſubſcribers thereto, to advance 20 *per cent.* more on their reſpective ſubſcriptions: And the ſubſcribers to the ſaid indenture, and to the deeds-poll, and undertakers of the navigation, having paid in 47,830l. the ſame was laid out in making the ſaid depoſit, and in cutting a new channel for the river *Dee*, through the adjacent marſhes, near ten miles in length; and making a dam and ſluices croſs the old channel, and deepening thereof, and making other works neceſſary for the recovering and preſerving the navigation, and the charges neceſſarily attending the undertaking; and the river was, in *April*, 1737, turned into the new channel, and hath ever ſince continued to run through the ſame; and ever ſince ſhips and veſſels of conſiderable burthen have ſailed through the new channel up to *Wilcox Point*; and the undertakers being, by the ſaid act, directed and impowered to make and keep the river navigable from the ſea to the ſaid point; that there ſhould be ſixteen feet water in every part of the river at a moderate ſpring tide, for ſhips to come and go to and from the ſaid city, ſeveral trials and ſoundings were made, to aſcertain the height the water flowed to, at a moderate ſpring tide, and thereby the ſame was fixed to be level with the height of nine feet above the apron of the ten gate ſluice, part of the works of navigation erected by the undertakers; and a pile was, in 1738, fixed in the river near the ſaid ten gate ſluice, on which the height of nine feet from the apron of the ten gate ſluice was marked, and ſet for the ſtandard height of the water at a moderate ſpring tide, and the ſame has ſince been commonly called the ſtandard; and the undertakers finiſhed the undertaking in making the ſaid river navigable, according to the intent and true meaning of the ſaid recited act of 6 *Geo.* II. before *March* 25, 1740, and have ſince that time been at very great expences in keeping the ſame navigable, according to the true meaning of the act; and the joint ſtock of the ſaid undertaking having been laid out as aforeſaid, and proving inſufficient for ſecuring the works, and incloſing and improving the ſands and grounds veſted in the ſaid undertakers: At a general meeting, held *December* 11, 1740, they did agree, that the ſaid joint ſtock ſhould be increaſed to 52,000l. and that application ſhould be made to parliament to incorporate the undertakers: And by one other act made 14 *Geo.* II. intituled, *An act for incorporating the undertakers of the navigation of the river* Dee, it was amongſt other things enacted, That

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William Allix, and the ſeveral other perſons therein named, proprietors of the undertaking, and the repreſentatives of ſuch ſubſcribers to the ſaid indenture or deeds-poll as were dead, their ſeveral and reſpective ſucceſſors, &c. ſhould be erected into one company for the purpoſes aforeſaid, and be incorporated by the name of *The company of proprietors of the undertaking for recovering and preſerving the navigation of the river* Dee, and have perpetual ſucceſſion, and a common ſeal, and have power to do all ſuch acts as the ſaid *Nathaniel Kinderley*, his heirs, &c. might have done, by virtue of the ſaid act of 6 *Geo.* II. and to take all ſuch duties, tonnage dues, and payments whatſoever, as the ſaid *Nathaniel Kinderley*, his heirs, &c. were empowered to do by the ſaid act; and to embank, incloſe, improve, and apply to the uſe of the ſaid company, the *White Sands*, ſoil, and ground, and other lands whatſoever, by the ſaid act veſted in the ſaid *Nathaniel Kinderley*, his heirs, &c. upon the terms in the ſaid act mentioned, in the ſame manner as the ſaid *Nathaniel Kinderley*, his heirs, &c. might have executed the ſame, by virtue of the ſaid act, ſubject to the limitations, &c. in the ſaid act mentioned; as by the act of 14 *Geo.* II. will more fully appear: And the tonnage rates and duties, which, by the ſaid act 6 *Geo.* II. are charged for all goods brought into, or laden in the ſaid river, are by experience found to be too high, and a diſcouragement to the trade of the city; and the mayor and citizens of *Cheſter*, and the merchants and traders of *Cheſter*, have therefore requeſted the company of proprietors of the undertaking to conſent that the ſame may be repealed, and that in lieu thereof eaſier tonnage duties may be appointed, which the ſaid company have conſented to; the doing whereof will be an encouragement to trade, and for the common good of the undertaking, that the ſaid acts of 6 and 14 *Geo.* II. ſhould be explained and amended, in the ſeveral other particulars hereafter mentioned. 17 *Geo.* II. P. 571, 572, 573. 575, 576, 577, 578, 579.

It is therefore *enacted*, that after *May* 20, 1744, the ſaid ſeveral rates of tonnage, payable to the ſaid company of proprietors, by the ſeveral acts before recited, or either of them, ſhall be no longer payable; and that ſo much of the ſaid acts as relate to the payment thereof, ſhall be abſolutely repealed. P. 580.

After *May* 25, 1744, there ſhall for ever be paid unto the ſaid company, and their ſucceſſors, or to their collectors, for every ſhip, ſloop, hoy, bark, barge, lighter, boat, or other veſſel, coming into or going out of, or navigating in the river, and new channel, with any goods or merchandiſe (lead, oyſters, ſlates, and paving ſtones, excepted) by the maſter or owner of ſuch ſhip, &c. or other veſſel (every one of whom are by this act made liable to the ſame) the ſeveral rates, tonnage, keelage, or duties, according to the full of their reach and burden, herein-after particularly deſcribed, for every ton of burden of ſuch ſhip, &c. or other veſſel, that is to ſay; for every ſhip or other veſſel coming to, or going from the city of *Cheſter*, or to, or from any other place, between the city of *Cheſter* and *Park-gate*, on the north ſide of the river, and between the city of *Cheſter* and the town of *Flint*, on the ſouth ſide of the river, to or from any part of *Great-Britain*, or *Wales*, or the other places or countries herein-after mentioned, the ſeveral rates and duties following; that is to ſay, for every ſhip, ſloop, hoy, bark, barge, lighter, boat, or other veſſel, going to, or coming from any part of *Great Britain*, or *Wales*, between the ſaid city and *St. David's head*, or *Carliſle*, for every ton 2d. And for every ſhip, &c. going to, or coming from any place between *St. David's head* and the *Land's end*, or beyond *Carliſle*, to any part in, or on this ſide the *Shetlands*, or to, and from the *Iſle of Man*, for every ton 3d. And for every ſhip, &c. going to, or coming from any part of *Ireland*, for every ton 4d. And for every ſhip, &c. going to, or coming from any place, up the *King's Channel*, beyond the *Land's-end*, or beyond the *Shetlands*, for every ton 4d. And for every ſhip, &c. going to, or coming from every part of *Norway*, *Denmark*, *Holſtein*, *Holland*, *Hamburg*, *Flanders*, or any part of *France* without the ſtraits of *Gibraltar*, or the iſlands of *Guernſey* or *Jerſey*, for every ton 8d. And for every ſhip, &c. going to, or coming from any place in *Newfoundland*, *Greenland*, *Ruſſia*, and within the *Baltick*, *Portugal* or *Spain*, without the *Straits*, *Canaries*, *Madeiras*, *Weſtern-iſles*, *Azores*, for every ton 1s. And for every ſhip, &c. going to, or coming from any place in the *Weſt-Indies*, *Virginia*, or any other part of *America*, *Africa*, *Europe* or *Aſia*, within the *Straits*, or not named before, any part of *Africa* without the *Straits*, or *Cape de Verde Iſles*, for every ton 1s. and 6d. For every ſloop, hoy, bark, &c. carrying goods from,

or bringing goods to, the city of *Cheſter*, or through any part of the ſaid new chnnel, in order to be put on board, or diſcharged from any ſhip, &c. lying at *Park-gate*, *Flint* or any other place within the port of *Cheſter*, and below the ſaid new channel made by the ſaid undertakers, for every ton 2d. And ſo in proportion for a greater or leſs quantity than a ton; ſuch duties to be paid at the time of ſuch ſhip or other veſſe's diſcharge, either inwards or outwards, at the cuſtom-houſe in the port of *Cheſter*, ſo as no ſhip or other veſſel ſhall be liable to pay the duty but once for the ſaid voyage, both out and home, notwithſtanding ſuch ſhip or other veſſel may go and return back, with a lading of any goods or merchandiſe. 17 *Geo.* II. P. 581, 582.

And it being by the ſaid act of 6 *Geo.* II. (among other things) provided, that if any ſhip or veſſel, employed by the cheeſemongers of the city of *London*, in the cheeſe trade to the city of *Cheſter*, ſhould not go up to the city, or within any parts of the intended works of navigation, but ſhould have their lading put on board ſuch ſhip or veſſel, by boats or keels, 6d. *per* ton and no more, ſhould be paid to the ſaid *Nathaniel Kinderley*, his heirs, &c. by the maſter or owner of every ſuch boat or keel, for all cheeſe or lead, ſo to be put on board ſuch ſhip or veſſel, in full ſatisfaction and diſcharge of all duties and tonnage whatſoever; it is hereby further *enacted*, that after the 25th of *May*, 1744, the ſaid duty of 6d. *per* ton, made payable by the above recited proviſo, ſhall ceaſe, and be no longer payable; and that, in lieu of the ſaid duty of 6d. *per* ton, for ſuch boats or keels, a ſum of 2d. *per* ton, and no more, ſhall from *May* 25, 1744, be paid to the ſaid company, and their ſucceſſors, by the maſter or owner of every ſuch boat or keel, carrying cheeſe, (lead being exempted by this act from the payment of any tonnage) to be put on board ſuch ſhip or veſſel, in full ſatisfaction of all duties and tonnage whatſoever.

All ſhips, &c. or other veſſels, coming into, or going out of the ſaid river, and new channel, and liable to the payment of the duties of tonnage by this act impoſed, ſhall be meaſured, by taking the length of the keel, ſo much as ſhe treads on the ground, and the breadth to be taken by the midſhip beam from plank to plank, and half that breadth ſhall be accounted for the depth of every ſuch ſhip or veſſel; then multiply the length by the breadth, and the product thereof by the depth, and divide the whole by ninety-four, and the quotient ſhall give the true contents of the tonnage; according to which method, all ſhips, and other veſſels, ſhall be meaſured, and the ſeveral duties of tonnage thereby be computed, and collected accordingly. P. 583.

If the lading of any ſhip, or other veſſel, which ſhall be liable to the payment of the duties of tonnage, impoſed and payable by this act, according to the burden of ſuch ſhip or other veſſel, by admeaſurement thereof, in manner as before directed, ſhall conſiſt partly of lead, oyſters, ſlates, or paving ſtones (which are exempted by this act from the payment of tonnage) and partly of other wares and merchandizes, in reſpect whereof ſuch ſhip or veſſel will be liable to the payment of the duties and tonnage by this act impoſed; in every ſuch caſe, there ſhall be a deduction made from the tonnage of every ſuch ſhip, or other veſſel, in proportion to the quantity of ſuch lead, oyſters, ſlates, or paving ſtones, contained in every ſuch ſhip or other veſſel.

In all caſes where ſkins or wool ſhall be imported, ſuch ſkins or wool ſhall pay the rates of tonnage by weight only, and not according to the burden of ſuch ſhip, or other veſſel by admeaſurement thereof; and where the lading ſhall conſiſt partly of ſkins, or wool, or both of them, and partly of other wares and merchandizes, in reſpect whereof ſuch ſhip or veſſel will be liable to the payment of the duties of tonnage by this act impoſed, a deduction ſhall be made from the tonnage or burden of ſuch ſhip, or other veſſel, in proportion to the weight of ſuch ſkins or wool, and if any diſpute ariſes concerning the true weight of ſuch ſkins or wool; the importer ſhall, at his own coſts and charges, provide proper and convenient weights, beams, and ſcales, for weighing the ſame. P. 584.

If the maſter, or other perſon, taking charge of any ſloop, hoy, &c. carrying goods from, or to the city of *Cheſter*, or through any part of the ſaid new channel, in order to be put on board, or diſcharged from any ſhip or other veſſel, lying at *Park-gate*, *Flint*, or any other place within the ſaid port of *Cheſter*, and below the ſaid new channel, &c. or carrying any goods from, or to the city of *Cheſter*, to, or from any part of *Wales*, ſhall chooſe to pay the duty, and tonnage, according to the weight and quantity of the goods,

goods, and not according to the burden of the ſloop, &c. by the admeaſurement thereof; and ſuch maſter, &c. ſhall make ſuch declaration, upon entering of any ſuch ſloop, &c. inwards or outwards; in ſuch caſe, the duty and tonnage ſhall be paid according to the weight of the goods, and not according to the burden of ſuch ſloop, &c. by admeaſurement thereof. 17 *Geo.* II. P. 585.

In caſe any diſpute ſhall ariſe between the collector of the tonnage payable by this act, and the maſter or other perſon having charge of any ſhip, or other veſſel, ſuch collector ſhall weigh, meaſure, or gauge all goods, wares, or merchandizes, at the time of the ſhipping or unſhipping thereof; and if ſuch goods ſhall, upon ſuch weighing, meaſuring, or gauging, appear to be of as great or greater quantity than ſuch collector did affirm and inſiſt the ſame to be, before the weighing thereof, &c. the maſter, &c. taking charge of the ſaid veſſel, ſhall pay the coſts and charges of ſuch weighing, meaſuring, &c.

The ſeveral rates of tonnage, payable by this act, ſhall be paid by the maſters or owners of every ſuch ſhip or veſſel, before they ſhall be cleared inwards or outwards, by any of the officers of his majeſty's cuſtoms, at the port of *Cheſter*; and if any ſuch officer ſhall clear any ſhip, until the maſters produce an acquittance, or if any maſter refuſe, or neglect, to pay the ſaid duty, the offender ſhall, for every default, forfeit 20l. to the company, &c.

The ſaid collectors may go on board any ſhip, hoy, &c. to take the dimenſions thereof, and to demand the duties payable by this act; and for non-payment thereof, or refuſal to let ſuch officer take the dimenſions, he may diſtrain, and, after ten days, ſell the diſtreſs, &c. P. 586.

It being provided by the act 6 *Geo.* II. that *Nathaniel Kinderley*, his heirs, &c. ſhall make a wet dock for the ſhips to lie in; and that there ſhall be paid to *Nathaniel Kinderley*, &c. for every ſhip or veſſel, laden within the ſaid dock, 9d. *per* ton; the ſaid duty is hereby altered to 6d. *per* ton, and no more, &c. P. 587.

The term of three years after completing the ſaid work of navigation being expired, and the truſtees of the 10,000l. depoſit, having, by ſale of part of the *South-Sea* annuities, (in which the ſaid 10,000l. was inveſted) raiſed and paid all the monies that have been ordered to be paid by them, by virtue of 6 *Geo.* II. and the reſidue of the ſaid depoſit, which, at preſent, conſiſts of 7180l. 3s. 8d. *Old South-Sea* annuity ſtock, remaining in the names of the ſaid *Thomas Revel* and *John Bland*, the ſurvivors of the ſaid truſtees (*John Manley* being dead;) It is enacted, that they ſhall, on or before the 25th day of *May*, 1744, transfer to the company and their ſucceſſors the ſaid 7180l. 3s. 8d. remaining in their hands or names. P. 588.

The tonnage duties, ariſing by this act, ſhall, at all times hereafter, be liable to anſwer the damages in the act of 6 *Geo.* II. mentioned, under the ſame regulations, and ſubject to be levied and applied to the ſame uſes, as the duties of tonnage, impoſed by the ſame act (and hereby repealed) were thereby made ſubject to. P. 589.

In caſe the tonnage duties ſhall not be ſufficient to pay ſuch damages, then all and ſingular the White Sands, and all other the premiſes, by the ſaid act of 6 *Geo.* II. veſted in *Nathaniel Kinderley*, &c. and by the ſaid ſubſequent act of 14 *Geo.* II. in the ſaid company, and their ſucceſſors, are hereby declared to be ſubject to the payment, or ſatisfaction, for all ſuch damages as ſhall be directed to be paid, in purſuance of the ſaid act of 6 *Geo.* II.

The river being ſubject in dry ſeaſons to be filled up with ſand, ſo that, at a moderate ſpring tide, it may frequently happen, that there may not be ſixteen feet water in every part of the river, until the ſaid ſands ſhall be removed, by the freſhes coming down the river; it is therefore enacted, that, inſtead of ſixteen feet water, at a moderate ſpring tide, the ſaid company and their ſucceſſors ſhall, at all times hereafter, maintain the ſaid river *Dee*, from the ſea to *Wilcox Point*, that, on the computation of a moderate ſpring tide, as marked on the ſtandard, there ſhall be fifteen feet water in every part of the channel, for ſhips and veſſels to come and go, to and from the ſaid city.

The mayor, &c. of the city, ſhall appoint one proper perſon, and the company another, which perſons are hereby conſtituted the ſupervifors of the navigation of the river *Dee*, and each of them ſhall have full power to ſound the ſaid river, or any part thereof,

thereof, for three ſucceſſive tides, as often as they ſhall be required ſo to do by the ſaid mayor, &c. or the ſaid company, or the collectors appointed to receive the tonnage; and if, upon any ſuch ſoundings ſo made, the channel of any part of the river ſhall appear to be choaked up, ſo that there would not, at a moderate ſpring tide (according to the height marked on the ſtandard) be in the channel of every part of the river, from the ſea to *Wilcox Point*, fifteen feet water; and, in caſe either of the ſuperviſors ſhall make an affidavit thereof in writing, before any juſtice of the city or county of *Cheſter*, deſcribing the particular parts of the river which ſhall be too ſhallow, &c. and if the ſaid company ſhall, for the ſpace of four kalendar months, ſuffer the ſaid river to continue choaked up, ſo that, on the computation of a moderate ſpring tide, as marked on the ſaid ſtandard, there ſhall not be fifteen feet water in the channel, &c. as often as the ſaid event ſhall happen, the payment of the tonnage rates ſhall be ſuſpended, and not collected until the ſaid depth of fifteen feet ſhall be regained; from which time the tonnage duties ſhall be again revived, and become payable as before, and ſo *toties quoties*. 17 *Geo.* II. P. 590.

If the company neglect to cleanſe and deepen the riven eight months after the ſaid term of four months ſhall be expired, ſo that, on a computation of a moderate ſpring tide, &c. there ſhall not be fifteen feet water in the channel, &c. the commiſſioners impowered by the act 6 *Geo.* II. at a meeting to he held for that purpoſe, of which twenty days notice ſhall be given in the *London Gazette*, and by fixing notice in writing on the caſtle gate of *Cheſter*, by warrant under their hands, ſhall appoint proper perſons, to enter into and upon the white ſands, lands, &c. by this or the former acts veſted in the company, and to take poſſeſſion thereof, and receive the rents and profits thereof, and to diſtrain for the ſame, as they ſhall ſee occaſion; till they have received ſo much money, as ſhall be neceſſary to defray the charges, occaſioned by ſuch diſtreſs or entry reſpectively, ſo as ſuch poſſeſſion, receipt of rents, and powers of diſtreſs, ſhall not extend to avoid any leaſe, which may hereafter be granted by the company to any tenant, at the improved rent, without taking any fine for the ſame, or to compel ſuch tenant to pay any more than the arrears of rent really due; and ſo, as ſuch poſſeſſion, receipt of rent, and power of diſtreſs, ſhall continue no longer than until the depth of fifteen feet ſhall be regained, and the money expended in regaining thereof, and the charges occaſioned by ſuch entry, poſſeſſion, and diſtreſs, ſhall be ſatisfied; and the money ſo to be raiſed and received, ſhall be employed for thoſe reſpective purpoſes, as the major part of the ſaid commiſſioners ſhall direct. P. 591, 592.

Provided, that no ſuch order made by the ſaid commiſſioners ſhall be binding, unleſs thirteen at leaſt in number ſhall be preſent at ſuch meeting.

The ſaid ſuperviſors ſhall (if required) weekly ſound the river, and ſhall make an affidavit in writing of the truth of ſuch ſoundings.

The ſuperviſors ſhall, at the expence of the company, on or before the 29th of *September*, 1744, cauſe to be erected in ſuch parts of the river as they ſhall think fit, two or more piles of timber, or other durable materials, to be therein fixed, ſo as the tops thereof ſhall be exactly level with the height of nine feet above the apron of the *Ten gate ſluice*, as the ſame is marked on the ſtandard, which piles and ſtandard ſhall for ever hereafter be kept in repair, and renewed as occaſion ſhall require; and if any perſon ſhall wilfully damage or deſtroy the ſame, they ſhall for every ſuch offence forfeit 200l. &c.

Two ferry-boats ſhall, at all times after *May* 25, 1744, be conſtantly kept by the ſaid company and their ſucceſſors, at their own expences, at ſuch parts of the new channel, as the ferry-boats already appointed have worked at, ſince the making the ſaid navigation, with proper and ſufficient attendants, and all ſubſtantial and effectual ropes, tackle, and neceſſaries proper thereunto, for the publick uſe and benefit of all his majeſty's ſubjects, paſſing and repaſſing in thoſe parts; and the perſons attending ſuch boats ſhall ferry over all paſſengers, when required, without being paid any thing for the ſame. P. 596.

The commiſſioners appointed by the act 6 *Geo.* II. or any thirteen of them, at any of their meetings, may ſet out one or more convenient roads, in any places over the ſands,

ſoil, and ground, veſted in the company, lying on the north ſide of the new channel, within the extent of the ſaid channel, to lead to and from the ſaid two ferries, or either of them, to the ſaid city of *Cheſter*, and to the towns of *Shotwicke* and *Shough-Hall*, in the hundred of *Worral*, in the ſaid county of *Cheſter*; and every ſuch road ſhall be for ever maintained and repaired at the expence of the company and their ſucceſſors.

If the ſaid company and their ſucceſſors ſhall neglect to maintain and repair the ſaid roads, or to ſupply ſuch ferry-boats with ſufficient attendants, &c. on every ſuch neglect the ſaid commiſſioners, impowered by the act of 6 *Geo.* II. may aſſeſs on the ſaid company ſuch reaſonable penalty as they ſhall think fit, &c. 17 *Geo.* II. P. 597.

The ſaid company, aſſembled in a general court, ſhall have power to call in from their members proportionably, according to their reſpective ſhares in the capital ſtock, any further ſums of money, as by ſuch general court ſhall, from time to time, be judged neceſſary, not exceeding, with the call of five *per cent.* already made purſuant to the ſaid former act, in the whole the ſum of forty *per cent.* And if any members, &c. who have or ſhall be required to pay in money upon any calls, &c. ſhall neglect to pay their ſhares of the money ſo called for, at the time appointed, by notice in the *London Gazette*, and on the *Royal Exchange* in *London*, the ſaid company may not only ſtop the ſhare, dividend, and profit, which ſhall become payable to ſuch members ſo neglecting, and apply the ſame towards payment of the ſhare of money ſo called for, till the ſame ſhall be ſatisfied, but alſo may ſtop the transfers, or aſſignments of the ſhares of every ſuch defaulter, with intereſt after the rate of eight *per cent. per ann.* for the money, ſo by them omitted to be paid, from the time the ſame was appointed to be paid, until the payment thereof; and the ſhares and ſtock-ſhares, and ſtocks of ſuch defaulters, ſhall be liable to make good the monies ſo appointed to be paid, and intereſt as aforeſaid; and, if the principal and intereſt ſhall be unpaid, by the ſpace of three months, then the company, &c. ſhall have power to ſell and aſſign ſo much of the ſaid ſtock of ſuch defaulters, as will ſatisfy the ſame, rendering the overplus (if any be) to the proprietors; and the money ſo called for and paid in, ſhall be deemed capital ſtock, &c. P. 598.

The ſaid joint ſtock of the ſaid company, created and eſtabliſhed, in purſuance of this and the former act, and the ſhare and intereſt of each particular member thereof, ſhall be deemed, in all the courts of law and equity, and elſewhere, to be a perſonal eſtate to all intents and purpoſes whatſoever, and not a real eſtate; and ſhall go to the executors or adminiſtrators of the perſons dying poſſeſſed thereof, intereſted in, or intitled thereto, and not to the heirs of ſuch perſons; and the proprietors of the ſaid joint ſtock, their executors, &c. ſhall be reſpectively intitled to all the benefits and advantanges by the firſt recited act, veſted in *Nathaniel Kinderley*, his heirs, &c. in proportion to their reſpective intereſts in the joint ſtock of the ſaid company. P. 599.

The method of aſſigning, transferring, and accepting of any intereſt, in the ſaid joint ſtocks, ſhall be in the following form, *viz.*

I A. B. *in conſideration of* *paid to me*
by C. D. *do hereby bargain, ſell, aſſign, and transfer to the ſaid* C. D.
in the joint ſtock of the company of proprietors of the undertaking for recovering and preſerving the navigation of the river Dee; *To hold to him the ſaid* C. D. *his executors, adminiſtrators, and aſſigns, ſubject to the rules, orders, and by-laws of the ſaid company.*
Witneſs my hand, the
day of

I, the ſaid C. D. *do hereby accept of the ſaid* *of the*
ſaid joint ſtock, ſubject to the rules, orders, and by-laws of the ſaid company.
Witneſs my hand the day and year aforeſaid.

Which transfer and acceptance ſhall be ſigned in the company's books, to be kept for that purpoſe; and it being witneſſed by one witneſs to the ſigning thereof, ſhall be valid to all intents and purpoſes.

Nothing

Nothing in this act, or in the acts of 6 and 14 *Geo.* II. or either of them contained, ſhall extend to hinder or reſtrain Sir *John Glynne*, bart. lord of the manor of *Hawarden* in the county of *Flint*, his heirs, &c. or any other perſons intitled to the right of common thereon, from enjoying the lands, grounds, or ſalt marſhes, lying on either ſide of the banks and forelands of the new channel, &c. 17 *Geo.* II. P. 600.

The new channel, and the banks, and forelands on each ſide thereof, and the foreland of the breadth of twenty feet, next adjoining to the outſide foot of the north bank of the new channel, and ſo much more of the common ſalt marſhes next adjoining to the ſaid twenty-feet-foreland, as will be neceſſary for making a convenient ditch or mound, to fence and ſeparate the ſaid twenty-feet-foreland from the reſt of the common ſalt marſhes, and the ſeveral pieces of marſh lands containing three acres and five acres, ſhall be for ever hereafter veſted in the company, &c. in conſequence whereof, and as a recompence for ſuch part of the marſh-lands, as are hereby veſted in the company, and of all other damages done to the common ſalt marſhes, the ſaid company ſhall make good and keep in repair the foreland and fences of the new cut or channel, ſo as thereby to prevent the common ſalt marſhes lying within the manor or pariſh of *Hawarden*, on either ſide of the new cut, from being deſtroyed or waſhed away, by the flux or reflux of the water through the ſaid new cut, or through the gutters or other inlets running through the marſhes; and in caſe, at any time hereafter, the common ſalt marſhes lying on either ſide of the new cut, and within the manor or pariſh of *Hawarden*, or any part thereof, ſhall, in any one year, be ſo far injured or deſtroyed, by reaſon of the ſaid forelands not being kept in repair, or by reaſon of the ſaid navigation, or of any works to be made in purſuance of the ſaid act 6 *Geo.*. II. ſo that there ſhall be thereby, in any one year, the quantity of fifty acres or more of land, part of the ſaid ſalt marſhes, deſtroyed; from thenceforth, as often as the ſaid event ſhall happen, any fifteen or more of the commiſſioners impowered by the ſaid act 6 *Geo.* II. or their ſucceſſors, who ſhall be preſent at any meeting to be held for that purpoſe, of which three months notice ſhall be given in the *London Gazette*, and by affixing notice in writing thereof on the caſtle gate of *Cheſter*, by warrant under their hands and ſeals, may allot ſuch quantity of lands adjoining to the common ſalt maſhes, by the former act or one of them veſted in the company, as ſhall be equal in value to ſuch part of the ſaid marſhes, as ſhall have been ſo waſhed away, by way of recompence for the ſame; the lands ſo to be allotted to lie as near the common ſalt marſhes as conveniently may be; which determination of the commiſſioners ſhall be final, and binding to all parties intereſted, unleſs the company, or the lord of the manor of *Hawarden*, or any perſons having intereſt in the ſaid marſhes, ſhall think themſelves thereby aggrieved, and ſhall make application to the next court of great ſeſſion for the county of *Flint*, to have the value of the lands determined by a jury; in which caſe, the juſtices of the ſaid court of great ſeſſion ſhall cauſe the value of the land ſo deſtroyed, and of the lands to be given in lieu thereof, to be ſettled, aſſeſſed, decreed, and aſcertained by the ſame rules and methods, by which, by the act of 6 *Geo.* II. they are impowered and directed to ſettle the damage therein mentioned; and ſuch determination of the juſtices of the ſaid great ſeſſion ſhall not be removed, but binding and concluſive to all intents and purpoſes, &c. and the lands ſo decreed in lieu for ſuch part of the ſaid common ſalt marſhes, which ſhall, by the means aforeſaid, be deſtroyed, ſhall for ever thereafter be the property and inheritance of, and be enjoyed by the ſame perſons and their heirs who were before entitled to a right of common in the ſaid ſalt marſhes, under the like limitations, and with the like advantage as they might have held the ſaid marſhes in caſe they had not been deſtroyed; and, according to their reſpective eſtates therein, diſcharged from the rights of entry and diſtreſs of any other perſon whatſoever; but the ſame ſhall not avoid any leaſe, which may be hereafter really granted by the company to any tenant or occupier of any part of the ſaid lands for any term of years not exceeding twenty-one, at the improved rent, without taking any fine, or to compel ſuch tenant to pay any more than the rent reſerved on ſuch leaſe; and, if the common ſalt marſhes, which, by the means aforeſaid, ſhall, in any one year, be deſtroyed, ſhall not exceed fifty acres, the commiſſioners appointed by the ſaid act of 6 *Geo.* II. or any jury to be appointed in purſuance of the ſaid act,

ſhall

ſhall decree what recompence ſhall be paid by the company, or their ſucceſſors, which recompence ſhall be paid to the lord of the manor of *Hawarden*, for the time being, the rector of the pariſh of *Hawarden*, for the time being, and to *Thomas Powis*, &c. and ſhall be by them applied for the uſe of the lord of the ſaid manor, and the perſons having a right of common in the common ſalt marſhes, lying within the ſaid manor of *Hawarden*, as the ſaid commiſſioners, &c. with the conſent of the lord of the ſaid manor, &c. ſhall direct or appoint; which damages the lord of the ſaid manor is hereby impowered to claim and make out accordingly; and, if the company, or the lord of the manor, ſhall be diſſatisfied with the determination of the commiſſioners, they are hereby reſpectively impowered to apply to the juſtices at the next great ſeſſion to be held for the county of *Flint*, &c. 17 *Geo.* II. P. 603, 604.

The company ſhall keep five ways, of the breadth of twenty feet each, and at the diſtance of one mile, or thereabouts, from each other, over the ditch or mound which is intended to fence the bank and forelands on the north ſide of the river, from the reſt of the ſalt marſhes, for the cattle feeding on the ſalt marſhes, on the north ſide of the channel, to go to and from the ſaid channel to water. 605.

A ſurvey of the marſh lands on the ſouth part of the new cut, and of the gutters and other receptacles of water therein, ſhall, on or before *Sept.* 29, 1744, be taken by two ſurveyors, one to be appointed by the company, and the other by the lord of the manor of *Hawarden*, who ſhall truly ſurvey and admeaſure the ſame, and make an exact plan thereof, diſtinguiſhing what parts thereof are firm land, and what are gutters or waſte lands; and the ſurveyors ſhall within one month after *Sept.* 29, tranſmit an atteſted copy of ſuch plan, under their hands, to the clerk of the peace of the county of *Cheſter*, to be kept among the records of the ſaid county, to which all perſons may have recourſe, *gratis*, &c.

If any of the ſaid gutters are waſte lands, to be deſcribed in the ſurvey, ſhall hereafter be filled up, and become firm land and graſſed over, it ſhall be ſet againſt the like quantity of the marſh lands which ſhall be waſhed away; and the ſaid company ſhall be obliged to make a recompence only for the reſidue of the ſaid marſh lands, which may be deſtroyed as aforeſaid. P. 606.

It ſhall not be lawful for the company, or their under-tenants, &c. at any time hereafter, to build cottages on the ſaid pieces of marſh land, containing three acres, and five acres, or on the banks or forelands on either ſide of the new cut, or on the foreland of 20 feet in breadth herein-before declared to be veſted in the company, without the licence of the lord of the manor within which the ſame ſhall lie, firſt obtained in writing under his hand and ſeal; and the ſaid company, &c. ſhall not have any right of common on the ſaid common ſalt marſhes, as appendant to the ſoil of the new cut, or the banks or forelands thereof, &c.

This act ſhall not extend to prejudice the proprietors, of any royalties and liberties of fiſhing and fowling upon the river, &c.

Nothing herein, or in the ſaid act of 6 *Geo.* II. contained, ſhall extend to hinder *Sir John Glynne*, owner of the caſtle and manor of *Hawarden*, or his heirs, from enjoying all ſuch rights and privileges, royalties and juriſdictions, as he or his anceſtors might have done, in caſe this or the ſaid former act had never been made; ſo that ſuch rights, &c. do not infringe on the rights and powers given the undertakers by the ſaid act. P. 607.

Nothing in this act ſhall affect any right or property that *John Theedam*, of the *Inner Temple, London*, gent. his heirs, &c. hath or have to the white ſands, lands, and hereditaments in the former act of 6 *Geo.* II. mentioned; but the ſaid rights, &c. ſhall remain to him, his heirs, &c. for ever, as if this act had never been made.

No perſon ſhall hang any net or other engine in, over, or acroſs the channel of the ſaid river, or fix any ſtakes in the ſame, or on the banks thereof, to the prejudice of the channel, or hinderance of the navigation.

Nothing in this act contained ſhall take away or leſſen the powers given by the ſaid act of 6 *Geo.* II. to the commiſſioners appointed in purſuance of the ſaid act; but they ſhall have the ſame powers and authorities as they had before the making this act; and all other clauſes and things in the ſaid act of 6 and 14 *Geo.* II. which are not hereby repealed or varied, are ratified and confirmed. P. 608.

All

All actions and ſuits at any time heretofore commenced or proſecuted in any courts of law or equity, between the mayor and citizens of the ſaid city, and the company, or between any of the merchants and traders of the city, or other perſons, and the ſaid company, relating to any of the matters aforeſaid, and depending at the time of paſſing this act, ſhall immediately ceaſe and be diſcontinued; and no actions or ſuits ſhall be hereafter commenced or carried on by the company againſt the mayor and citizens of the ſaid city, in reſpect of the uſe or occupation, or of the rents or profits of ſuch part of the *Rood*, as by the ſaid act of 6 *Geo.* II. was veſted in *Nathaniel Kinderley*, his heirs, &c. antecedent to the ſaid 25th day of *May*, 1744, or againſt any of the merchants or traders of the city of *Cheſter*, or any perſons, on account of any ſums of money due for any of the duties or tonnage made payable by the ſaid recited act of 6 *Geo.* II. and hereby repealed, as aforeſaid, or upon any ſecurity given for the ſame. 17 *Geo.* II. P. 609.

All actions commenced for any thing done in purſuance of this act ſhall be brought within twelve months after the fact committed, and laid in the county where the cauſe of action ſhall ariſe, &c. P. 610.

This act ſhall be deemed a publick act, &c.

This act recites the former, and confirms an agreement entered into between the company, *Sir John Glynne*, and others, as to right of common and other affairs; and likewiſe as to allowance of a certain ſum of money to *Sir John Glynne*, for making a new bank with one or more ſluices, and to keep the ſame in repair; and likewiſe impowers the company to make a call not exceeding 20 *per cent.* more than was allowed by the laſt act. 26 *Geo.* II.

LOYNE *or* LUNE, *and* LANCASTER.

The preamble ſets forth, that the town of *Lancaſter* in the county palatine of *Lancaſter*, from its great and extenſive commerce to the *Weſt Indies*, and other foreign parts, is now become a very conſiderable port, and has, for ſome time paſt employed and maintained great numbers of ſhips and mariners, to the great advancement of the revenue, and the improvement of the trade and navigation of this kingdom: And that the navigation of the river *Loyne* (otherwiſe called *Lune*) is become very difficult and dangerous; and that the only place near the town, where ſhips can be moored and diſcharged, is, by reaſon of the ſhoals, and other obſtructions in the ſoil of the river, become very unfit and unſafe for that purpoſe, inſomuch that many ſhips and veſſels ſtationed there have been overſet and damaged: And it is conceived to be highly neceſſary for the benefit and improvement of the ſaid navigation, that a quay or wharf, with other conveniences, ſhould be built on the ſouth weſt ſide of the river, and that buoys ſhould be placed at the entrance into, and in other parts of the river, and land-marks erected for directing of ſhips; and that a place of ſafety ſhould be made for the harbouring and protection of the ſhipping, near the mouth of the river: And that the Rev. *James Fenton*, L. L. D. vicar of the church of *Lancaſter*, is, in right thereof, ſeized of divers parcels of land and ground, which are commodiouſly ſituated for the purpoſes aforeſaid; and that the right rev. *Samuel*, lord biſhop of *Cheſter*, the Ordinary, *Edward Marton*, eſq. patron of the advowſon of the vicarage of the ſaid church, and the ſaid *James Fenton*, the preſent incumbent, have reſpectively agreed, that the ſaid parcels of ground ſhall be diſpoſed of, for the purpoſes herein-aftermentioned, ſubject to the rents, reſervations, and reſtrictions herein-after expreſſed: Wherefore, for promoting and carrying on a deſign ſo beneficial, *It is enacted* that all that parcel of land, being part of a certain cloſe, called the *Bridge Field*, belonging to the church of *Lancaſter*, and containing three roods, and thirty-two perches; and alſo that parcel of land, being part of another cloſe, called the *Hay Field*, belonging alſo to the ſaid church, and containing thirty-two perches; and alſo that parcel of land called the *Summer Paſture*, belonging alſo to the ſaid church, and containing about three acres, five roods, and thirty-two perches, ſituate and contiguous to the ſouth-weſt ſide of the river *Loyne*, with their rights, members, and appurtenances, ſhall, from and after 28 *April*, 1750, be veſted in *Abraham Rawlinſon*, *William Butterfield*, and *John Bowes*, merchants

merchants of *Lancaſter*, their heirs and aſſigns, abſolutely diſcharged of all claims, &c. from the ſaid *James Fenton*, and his ſucceſſors, vicars of the ſaid pariſh church, for ever; to the uſes and truſts herein-after mentioned, viz. to the intent that the ſaid *James Fenton*, and his ſucceſſors, vicars of the ſaid pariſh church, for ever; to the uſes and truſts herein-after mentioned, *viz.* to the intent that the ſaid *James Fenton*, and his ſucceſſors, vicars of the ſaid church, ſhall enjoy, out of the ſame premiſſes, the annual rent of 14l. 14s. free of all deductions whatever, by four quarterly payments, to be made on *May* 1, *Auguſt* 1, *November* 1, and *February* 1, in every year, for ever; the firſt payment to be made on *May* 1, 1750. And, if the ſaid annual ſum ſhall be unpaid for twenty days after any of the times before limited for payment thereof, the ſaid vicar, and his ſucceſſors, may enter and diſtrain upon the premiſſes, and make ſale of the diſtreſs, and receive the iſſues, till the ſaid rent, and all arrears, with the coſts and charges, and all damages, be fully paid. 23 *Geo.* II. P. 259, 260, 261, 262.

The parcels of land before mentioned and deſcribed ſhall go to the uſe of the ſaid *Abraham Rawlinſon*, *William Butterfield* and *John Bowes*, their heirs, &c. in truſt, that the ſame be employed as a quay or wharf, and for ſuch other purpoſes, and under ſuch directions, as are herein-after preſcribed.

When any of the truſtees, in whom the lands are veſted, ſhall die, the commiſſioners and truſtees, appointed for other purpoſes of this act, are to nominate another, &c.

The commiſſioners and truſtees appointed for the purpoſes herein-after mentioned, are to cauſe the parcels of ground aforeſaid to be divided from the other parts of the vicarage lands by a good and ſufficient ſtone wall, two yards high above the ground, next the church, to be built with lime and ſand, and to extend from a ſtile, to be in like manner built and made, at their expence, to the end of a garden wall (adjoining to the town of *Lancaſter*) now belonging to *Mary Maſon*, widow, through and over the *Bridge-Field*, and *Hay Field*, to the fence that divides the *Hay Field* from the *Summer Paſture*; and they are to keep up and repair (as often as occaſion requires) the ſaid fence, wall, and ſtile, and all the hedges, ditches, mounds, and fences, ſeparating the lands ſettled by this act from the reſt of the vicarage lands, ſo as to prevent any treſpaſſes or damages to be done to the ſaid vicar or his ſucceſſors; and they are alſo to cauſe a ſufficient watering place, or reſervoir of water, to be made in ſuch convenient part in the ſaid *Bridge Field* (not ſettled by this act) as the ſaid *James Fenton* ſhall appoint, for watering the cattle, depaſturing in the vicarage lands; and in caſe of any overflow thereof, the waters are to be turned into the river *Loyne*, at their expence, upon application made to any of them for that purpoſe, ſo as to prevent any damage to be done to the ſaid lands; and upon their refuſal or neglect ſo to do, the vicar and his ſucceſſors may turn off the ſaid water or watering place into the river, by ſuch ways, and in ſuch manner, as he ſhall think proper. P. 263, 264.

The occupiers of ſuch parts of the vicarage lands as are not ſettled by this act, ſhall have the liberty of taking ſand all along the cloſe called the *Summer Paſture*, betwixt the banks thereof and the low-water mark in the river *Loyne*, in order to cultivate the ſaid lands, with free liberty of ingreſs and regreſs for that purpoſe; and of driving their cattle, depaſturing in the vicarage lands, over the *Summer Paſture*, to water; the ways for theſe purpoſes to be appointed by the commiſſioners and truſtees, and by the vicar; and, upon their refuſal or neglect to comply therewith, the vicar may appoint ſuch ways for the purpoſes above as he ſhall think proper, and he and his tenants may make uſe thereof; and the vicar (until the diviſion-wall above deſcribed is built and finiſhed) is to have the herbage of ſuch parts of the ſaid *Bridge Field* and *Hay Field*, as are above-mentioned, and intended to be allotted to the quay; and no doors or ways are to be opened through the diviſion-wall or fence, without the licence of the vicar for the time being. P. 265.

The mayor of *Lancaſter* for the time being, *Francis Reynolds*, *Edward Marton*, Eſqrs. &c. are appointed commiſſioners and truſtees for executing the powers and purpoſes of this act, until the firſt *Wedneſday* in *May*, 1755, &c.

Such merchants or other perſons as ſhall, in his or their own right for the time being, be poſſeſſed of a ſixteenth, or other greater part of any veſſel of the burthen of fifty tons or upwards, then actually belonging to the town or port of *Lancaſter*, are impowered to meet at the exchange on the firſt *Wedneſday* in *May*, 1755, and ſo on every firſt *Wedneſday* in

in the ſaid month, in every third year, for ever, and nominate ſixteen ſubſtantial inhabitants of the town, to be joined with the mayor for the time being, to be commiſſioners and truſtees for building a key or wharf, with all other neceſſary works and conveniences upon the premiſſes ſettled by this act, and for letting or otherwiſe diſpoſing of the ſame for the advantage of the ſaid navigation; and for making places of ſecurity by erecting piers or moles at the mouth of the river for the preſervation of the ſhipping, and for doing all matters and things which they ſhall think requiſite for improving the navigation of the ſaid river *Loyne*, and for the other purpoſes of this act. 23 *Geo.* II. P. 266.

From and after the 30th of *April*, 1750, there ſhall be paid unto the commiſſioners and truſtees, or their collectors, for the term of twenty-one years, for every veſſel coming into or going out of the river *Loyne*, between *Lancaſter Bridge* and the *Perch* at *Cockerſand Abbey*, (ſhips of war, and other veſſels in his majeſty's ſervice, and ſhips driven in by ſtreſs of weather, and not lading or unlading within the port, and ſhips laden with coal or other fuel, only excepted) the ſeveral duties of tonnage following, viz. P. 267.

For every ſhip or veſſel coming into or going out of the port of *Lancaſter*, and trading to or from any port or place in *Europe* within the *Straits* or *Mediterranean Sea*, or in *Africa*, *America*, or *Greenland*, 1s. for every ton of the burthen of ſuch ſhip. P. 278. *N. B.* The reaſon of this advanced number is becauſe this was put in a ſchedule after the act.

For every ſhip or veſſel coming into or going out of the ſaid port, and trading to or from any foreign port or place in *Europe* (except *Ireland*, the *Iſle of Man*, and the *Straits*, or *Mediterranean Sea*) 8d. for every ton of the burthen of ſuch ſhip.

For every ſhip, veſſel, bark, or lighter, coming into or going out of the ſaid port, and trading to or from any port or place in *Great-Britain*, ſituate ſouth of *Holyhead*, or north of the *Mull* of *Galloway*, 6d. for every ton of the burthen of ſuch ſhip or veſſel.

For every ſhip, veſſel, bark, or lighter, coming into or going out of the ſaid port, and trading to or from any port or place in *Ireland*, to the *Iſle of Man*, 4d. for every ton of the burthen of ſuch ſhip or veſſel.

For every ſhip, veſſel, bark, or lighter, coming into or going out of the ſaid port, and trading to or from any port or place in *Great Britain*, north of *Holyhead*, or ſouth of the *Mull* of *Galloway*, 2d. for every ton of the burthen of ſuch ſhip or veſſel.

And for every ſhip, veſſel, bark, or lighter, coming in ballaſt into the ſaid river *Loyne*, and not lading or unlading within the ſaid port, for every ton one fourth part of the rates charged on any ſhip or veſſel of the ſame burthen.

The duties are to be paid at ſuch time and place as the commiſſioners and truſtees ſhall appoint; but no veſſel is liable to pay the duties inwards and outwards for the ſame voyage.

All veſſels, ſubject to the payment of the ſaid duties, are to be meaſured according to the rules of admeaſurement laid down in the act of 6 *Geo.* I. intitled, *An act for preventing frauds and abuſes in the public revenues of exciſe, cuſtoms*, &c. and the duties of tonnage are to be computed accordingly. P. 268.

After the expiration of the term of twenty-one years, one moiety of the ſaid duties is to ceaſe, and the other moiety is to be continued, and paid in the manner aforeſaid, for keeping the quay and other works in repair.

No officer of the cuſtoms of the port of *Lancaſter* ſhall clear any veſſel until the maſter produces a certificate of the payment of the duties of this act, &c. P. 269.

The commiſſioners and truſtees are impowered to make bye-laws, &c. and to contract *bonâ fide* for building the quay, &c.

The commiſſioners, &c. are impowered to borrow a ſum not exceeding 2000l. on the duties, at 5 *per cent. per ann.* wherewith to make the new intended quay, &c.

The collectors are impowered to go on board any veſſel to meaſure her, and demand the duties, and for non-payment, &c. may diſtrain; and, after ten days, ſell the diſtreſs, &c. P. 272.

All perſons who ſhall have any buſineſs to tranſact upon the ſaid quay or wharf in the mercantile way or otherwiſe, and for the benefit of lading and unlading veſſels on the ſouth weſt ſide of the river *Loyne*, may paſs and repaſs freely through the cuſtom-houſe yard with carriages, and otherwiſe, to and from the ſaid quay, as need ſhall require.

The

The commiſſioners, &c. for the unlading any veſſel that may come on ground on the *Seale Ford*, or on the ſhoals thereabouts, may open a road out of the *Summer Paſture* aforeſaid, over *Lancaſter Marſh*, over which all perſons in the mercantile way may paſs and repaſs with carriages, as occaſion ſhall require, to and from the quay at *Lancaſter*. 23 *Geo*. II. P. 273.

The commiſſioners, &c. may agree for the purchaſe of the weigh-houſe, ſtanding in the cuſtom-houſe yard, with the appurtenances; and uſe the cite and ſoil thereof, for the making the new quay aforeſaid, and diſpoſe of the materials for ſuch purpoſes as they ſhall think requiſite.

The commiſſioners, &c. may contract for the purchaſe of the lands, tenements, and hereditaments, which ſhall be adjudged neceſſary and convenient for the purpoſes aforeſaid, &c. And this act ſhall be deemed a public act, &c.

SOUTHWOULD.

The preamble ſets forth, that there had been, for time immemorial, a ſea port or harbour for ſhipping at *Southwould*, in the county of *Suffolk*, which is ſituated very conveniently, not only for the preſervation of veſſels navigating in the *Britiſh* ſeas, but alſo for the importation and exportation of many uſeful commodities, and for the benefit of trade in general; but that the road lying before the ſaid port is ſo obſtructed with ſand, as to prevent laden veſſels, except ſuch as are of a very ſmall burden, from paſſing into or out of the harbour; to the end therefore the ſaid harbour may be opened, and made commodious for ſhipping, and be of public utility to the trade and commerce of this kingdom, *It is enacted*, that from the 25th of *March*, 1747, for the term of twenty-one years, and from thence to the end of the then next ſeſſion of parliament, there ſhall be paid unto the commiſſioners and truſtees for the purpoſes of this act, or to ſuch perſon as ſeven of them ſhall appoint, under their hands and ſeals, the rates and duties herein-after mentioned, for and towards the opening, cleanſing, ſcouring, widening, depthening, repairing, and improving, &c. the ſaid harbour, viz. P. 431, 432.

For every *Engliſh* ſhip or veſſel, which ſhall ſail into the ſaid harbour and ſhall neither lade nor unlade there, the ſum of 1d. 2q. *per* ton, according to their light bills.

For every chaldron of coals, culm, and cinders, exported or imported, laid on board of, or landed or diſcharged out of, any *Engliſh* veſſel in the port of *Southwould*, the ſum of 1s.

For every laſt of wheat, rye, barley, malt, oats, and other grain, exported or imported, &c. in any *Engliſh* veſſel, the ſum of 1s.

For every ton of rock ſalt, exported or imported, &c. in any *Engliſh* veſſel, the ſum of 1s.

For every hogſhead of wine, brandy, rum, or other ſpirituous liquor, exported or imported, &c. in any *Engliſh* veſſel, the ſum of 1s.

For every ton of chalk, imported there to be burnt into lime, for any other purpoſe than that of manuring land, the ſum of 1d.

For every firkin of butter, and for every weigh of cheeſe, exported or imported, the ſum of 1d.

For every ton of grocery wares, and other goods, wares, and merchandizes, fiſh, butter, and cheeſe, only excepted exported, or imported, &c. in any *Engliſh* veſſel, the ſum of 1s. 6d.

For every ton of lead, exported or imported, &c. in any *Engliſh* veſſel, the ſum of 1s.

For every greater or leſs quantity of any of the ſaid goods or merchandizes than what are before-mentioned, proportionably to the prices herein-before ſet. P. 433.

For every foreign veſſel which ſhall ſail into the ſaid harbour, and ſhall not lade or unlade there, and for all goods, wares, and merchandizes, which ſhall be exported or imported, laden on board of, or diſcharged from out of, any ſuch veſſel in the ſaid port, double the duties herein-before laid.

Which

Which ſums ſhall be paid at the landing or ſhipping of the ſaid commodities; and, in default thereof, the collector of the ſaid duties may go on board and diſtrain ſuch veſſel, with her tackle, and furniture, or the goods and merchandizes, or any part thereof, and make ſale of the ſame; and no cuſtom-houſe officer ſhall clear any veſſel, till the maſter produces a certificate of having paid the duties, &c.

The monies collected, after deducting the expences of obtaining this act, ſhall be employed for the opening, cleanſing, ſcowering, &c. of the ſaid haven and harbour, and for opening any rivers or creeks for letting in ſtreams of water, to drive the ſand and other obſtructions out of the harbour, and for keeping it open, clear, and in good repair, and ſhall not be diverted to any other uſe, except the charge of collecting the ſame, which ſhall not exceed 6d. in the pound. 17 *Geo.* II. P 434.

In order to raiſe money ſufficient for the ſpeedy cleanſing, &c. the ſaid haven and harbour, the majority of the truſtees may mortgage the profits ariſing by the duties for ſuch ſums as they ſhall borrow for that purpoſe, &c.

The bailiffs of the borough of *Southwould*, for the time being, and *Sir John Rous*, *Sir Charles Blois*, *Sir Robert Kemp*, baronets, &c. ſhall be commiſſioners and truſtees for the execution of this act. P. 435.

This act ſhall be deemed a public act, &c.

BORROWSTOUNNESS.

The town of *Borrowſtounneſs*, in the county of *Linlithgow* in *Scotland*, is very well ſituated for carrying on foreign and coaſting trade, for the benefit of the country thereabouts in general, and of the ſaid town in particular, there being many coal and ſalt works very near, but theſe advantages cannot be obtained, unleſs the harbour, which is now in a ruinous condition, be effectually repaired and made commodious for all ſuch perſons as ſhall make uſe of the ſame, which will require a very conſiderable ſum of money, and the town hath no revenue to anſwer the expence thereof; *It is therefore enacted*, that, after the firſt day of *June*, 1744, for the term of twenty-five years, and to the end of the then next ſeſſion of parliament, there ſhall be laid a duty of two pennies Scots, or one-ſixth part of a penny ſterling, over and above the duty of exciſe payable to his majeſty, &c. upon every Scots pint of ale and beer, that ſhall be brewed, brought in, tapped, or ſold within the ſaid town of *Borrowſtounneſs*, or the liberties thereof; and that the ſaid duty ſhall be made payable by the brewers for ſale, or ſellers of all ſuch ale and beer, to *James Main*, *James Caſtles*, *William Muir*, &c. who are hereby appointed truſtees for deepening, rebuilding, and improving the ſaid harbour and piers, and alſo for putting in execution all other the powers by this act given; and the money ſo to be collected, ſhall be veſted in the ſaid truſtees and the ſurvivors of them; and ſhall be applied to the ſeveral purpoſes aforeſaid, the reaſonable charges of paſſing this preſent act being firſt deducted. P. 439, 440.

The truſtees have a power to mortgage the duties for raiſing of money, &c.

ELLENFOOT.

The preamble ſets forth, that the harbour of *Ellenfoot*, in the county of *Cumberland*, though ſituated very conveniently for the coal trade carried on in that county, is not, in its preſent condition, capable of receiving and harbouring veſſels ſufficient for that purpoſe; but, in caſe a new pier and other works were erected, it might be made a proper and ſufficient harbour for the reception and ſafeguard of veſſels navigating in thoſe ſeas; which would not only be a means of extending the ſaid coal trade, but would contribute alſo to the increaſe of his majeſty's cuſtoms, and the improvement of trade and navigation in general; but, as a ſufficient ſum of money cannot be raiſed to defray the expences thereof, without the aid and authority of parliament. 22 *Geo.* II. P. 201, 204.

It is enacted, that, from and after the 25th of *March*, 1749, during the term of twenty-one years, there ſhall be paid to the commiſſioners and truſtees herein after named, their collectors or deputies, viz. *Humphrey Sinhouſe*, Eſq. and the lord of the manor of *Ellenborough* for the time being, Sir *Charles Windham*, &c. for and towards the amending, enlarging,

larging, deepening, and cleanſing the ſaid harbour, and erecting a pier, and other proper works, and maintaining and repairing the ſame, the rates and duties following, viz. By every proprietor of coals, his, her, or their principal ſervant or agent, employed in ſhipping any coals on board any veſſel in the ſaid harbour 2d. for every 192 gallons, to be paid within ten days after ſuch coals are ſhipped; and alſo by every maſter of any ſhip that ſhall load or take any coals on board there, 2d. for every 192 gallons; and, from and after the expiration of the ſaid term of twenty-one years, 1d. for every 192 gallons of coals that ſhall be ſhipped there, to be paid by the maſter of the veſſel; the ſaid reſpective ſums of 2d. for twenty-one years, and 1d. afterwards, for ſo long a time as the ſaid harbour and other works provided for by this act, ſhall be kept up in good repair, to be paid by the maſter of the veſſel upon reaſonable demand, after ſhipping the ſaid coals, and before ſuch ſhip goes out of the harbour, or proceeds on her voyage. 22 *Geo.* II. P. 205.

From and after the 25th of *March*, 1749, during the term of twenty-one years, the maſter, &c. of any veſſel, not taking on board a lading of coals, ſhall pay 6d. *per* ton, according to her tonnage, for ſuch ſhip upon her arrival in the ſaid harbour, from *Great-Britain* or *Ireland*, or the *Iſle of Man*; the tonnage to be aſcertained in the manner deſcribed by an act of 5 and 6 *Will.* and *Mar.* intitled, *An act for granting to their majeſties ſeveral rates and duties upon tonnage of ſhips and veſſels, and upon beer, ale, and other liquors, for ſecuring certain recompences and advantages in the ſaid act mentioned*, &c.

Four pence *per* ton ſhall be paid by the maſter of every veſſel which, during the term aforeſaid, ſhall be driven by ſtreſs of weather into the harbour of *Ellenfoot*, or ſhall come there for ſecurity or preſervation, and ſhall not take in a lading of coals; and, after the expiration of the ſaid term of twenty-one years, one third part of the duties rated upon the tonnage of ſhips ſhall be paid in manner aforeſaid, for ſo long a time as the harbour and other works ſhall be kept in good repair. P. 206.

The monies received ſhall be applied towards amending, enlarging, deepening, and cleanſing the ſaid harbour, and keeping the ſame and the pier, and other works, continually in good repair; and ſhall not be employed to any other uſe, &c. P. 207.

If the duties payable by the proprietors, who ſhall ſhip any coals aboard any veſſels at *Ellenfoot*, ſhall not be paid within ten days after ſhipping thereof, the collector, by warrant from two or more commiſſioners, may diſtrain all ſuch coals, &c. and ſell them in three days, deducting the duties, &c. P. 208.

If the collector and the maſter of any veſſel, charged with the ſaid duties, cannot agree about and adjuſt the tonnage, the collector may, at all times convenient and ſeaſonable, enter into and admeaſure ſuch ſhip, according to the directions of the act referred to, which admeaſurement ſhall be the rule to charge the veſſel then, and at all times afterwards; and if any maſter, taking in coals as aforeſaid, ſhall not, upon reaſonable demand, pay the duty; and if any maſter of a veſſel, chargeable according to the tonnage thereof, ſhall not upon like demand, after the ſaid tonnage is agreed unto or aſcertained, pay the duty, the collector may diſtrain any tackle, apparel, or furniture, in, upon, or belonging to ſuch veſſel, and ſell the ſame within three days, deducting the duties, and charges, &c. P. 209.

No officer whatſoever of his majeſty's cuſtoms ſhall clear any veſſel, until the maſter produces a certificate of having paid the duties, &c. P. 210.

The commiſſioners, or ſeven of them, may contract with any workmen, &c. *bona fide*, for doing all other part of the work, and are impowered to appoint the place for building the pier, and enlarging the harbour, upon ſuch ground adjoining to the river *Ellen*, or the ſouth weſt ſide nigh *Ellenfoot*, as they ſhall think moſt convenient and neceſſary, &c. P. 211.

For the more ſpeedy completing the ſaid works, the commiſſioners, or ſeven of them, are impowered to borrow, at 5 *per cent.* intereſt, any ſum not exceeding 2000l. ſterling; and to aſſign over the duties, by indenture under the hands and ſeals of nine of them, as a ſecurity for repayment of the principal and intereſt.

The money ſo borrowed ſhall be applied by the commiſſioners, in the firſt place, for diſcharging ſo much of the expences attending the obtaining an act for the amending and repairing the ſaid pier and harbour, as ſhall be deficient; and afterwards for the enlarging,

enlarging, erecting, and repairing, &c. the ſaid pier and harbour of *Ellenfoot*. 22 *Geo.* II. P. 212.

If the duties of 2d. for every 192 gallons of coals, to be paid by the proprietors, and by the maſters of ſhips, and alſo the duties upon tonnage, reſpectively granted for twenty-one years, ſhall raiſe the principal money and intereſt provided for, and to be borrowed on the credit of this act, and alſo the charges of collecting the ſaid duties, before the end of the term of twenty-one years, then the ſaid ſeveral duties ſhall ceaſe; and from thenceforth, or from the expiration of the ſaid term, of twenty-one years, which ſhall firſt happen, only the duty of 1d. for every 192 gallons of coals, as aforeſaid, and one-third part of the duties on tonnage, ſhall continue as aforementioned, to be applied for repairing, cleanſing, and maintaining the ſaid pier and harbour, &c.

WEYMOUTH *and* MELCOMBE REGIS.

The preamble ſets forth, that the mayor, aldermen, burgeſſes, and commonalty of the borough and town of *Weymouth* and *Melcombe Regis*, in the county of *Dorſet*, have, for time immemorial, received, and been entitled to receive, petty cuſtoms, or wharfage duties, upon the importation and exportation of all goods and merchandizes into, and out of, the harbour of *Weymouth* and *Melcombe Regis*, and alſo harbour dues and ballaſt duty; which ſeveral duties have been conſtantly under the management of the mayor, aldermen, &c. of the ſaid town, as truſtees and managers, and have been applied for repairing the harbour, quays, wharfs, and other public buildings and works, within the ſaid borough and town: And whereas of late years ſeveral perſons have refuſed to pay the ſaid duties, and have been induced thereto by means of the great difficulties in ſupporting, by ſtrict and legal evidence, preſcriptive claims and rights to duties on each particular ſpecies of goods, and the preciſe ſum payable for the ſame; and although the ſaid corporation, in ſupport of their right, have brought ſeveral actions, and obtained verdicts of damages, by which their right in general hath been eſtabliſhed; yet, by the expences in carrying on ſuch ſuits, and the many evaſions and refuſals of payment, the fund for repairing the ſaid harbour, quays and wharfs, and other public buildings and works, hath been conſiderably leſſened; and the ſaid wharfs, &c. will be entirely deſtroyed, if not timely prevented: For remedy whereof, *It is enacted*, that, from and after the 24th of *June*, 1749, the reſpective rates, duties, and cuſtoms, enumerated in the ſchedules hereunto annexed, ſhall be paid by all perſons whatſoever, on the importation and exportation of all goods, wares, merchandizes, and commodities, into and out of the ſaid harbour of *Weymouth* and *Melcombe Regis*, and for all veſſels coming into the ſaid harbour, to the mayor, aldermen, &c. of the ſaid town and borough; and no other rates whatſoever, either under the denomination of or under a claim to a wheelage duty or otherwiſe; and the ſaid ſchedules are to be deemed as part of this act; and the ſaid corporation are impowered to meet, from time to time, and to appoint, under their hands, a collector of the rates, a quay-maſter, and a treaſurer, and to remove them at pleaſure; and alſo to appoint each of the ſaid officers ſuch a reaſonable ſalary, as they ſhall think proper, out of the rates, not exceeding 2s. in the pound of the money reſpectively received by them. 22 *Geo.* II. P. 499, 500, 501.

The ſaid magiſtrates ſhall be anſwerable for the acts and receipts of the ſaid officers, and ſhall take ſecurity of each of them, &c. P. 502.

The collectors and treaſurers ſhall keep books, and the ſaid magiſtrates ſhall meet yearly, on the *Friday* next after the 24th of *June*, between eight and twelve in the forenoon, in the *Guild-Hall* of the town of *Weymouth* and *Melcombe Regis*, or oftener if they ſhall think fit, and ſhall then ſummon the ſaid officers, and audit their accounts, &c.

The duties and cuſtoms impoſed by this act, upon importation, may be demanded by the ſaid magiſtrates, their collector, &c. either of the reſpective proprietors, or from the keeper of any warehouſe wherein the goods ſhall be depoſited, upon the firſt landing, or to whom the ſame ſhall be delivered, or who ſhall take charge thereof, or ſhall carry off the ſame from the wharfs or quay, at the election of the perſons authorized to receive the ſame; and alſo the duties and cuſtoms upon exportation of goods,

goods, except for ſuch ſtone only as ſhall be taken out of one veſſel into another in the ſaid harbour, may be demanded from the waggoner, carter, carrier, or other perſons bringing or delivering the ſame on board, at the option of the receiver of the ſaid rates; and alſo the duties upon veſſels, coming into the ſaid harbour, and for ſuch ſtone as ſhall be taken out of one veſſel into another in the ſaid harbour, may be demanded of the maſters or perſons having charge of ſuch ſhips. 22 *Geo.* II. P. 503, 504.

On non-payment of the rates within twenty-four hours after demand, the ſaid magiſtrates are impowered to ſue for and recover the ſame by action of debt, bill, plaint, or information, in any of the courts of record at *Weſtminſter*, &c.

All maſters of veſſels, coming into or going out of the ſaid harbour, ſhall, as ſoon as conveniently may be, deliver to the collector, at his requeſt, his wharfage bill, or a true account of all goods on board, and ſhall permit him to take a copy thereof, at his own expence, under penalty of forfeiting 5l. for every ſuch offence, &c. P. 505.

The quay maſters, for the more commodious lading and unlading veſſels, or taking in or caſting out ballaſt, ſhall order all maſters, and other perſons having charge of any veſſels, lying in the ſaid port or harbour, to ſtation, anchor, and moor the ſame, in ſuch proper births, near unto or adjoining the ſaid wharfs or quays, as they ſhall appoint; and if any maſter of any veſſel ſhall refuſe to comply with ſuch orders, he ſhall forfeit 40s. &c.

As often as any damage ſhall happen to be done to the bridge, wharfs, or quays, by any veſſel breaking looſe from its moorings, through default of the mariners; the mayor, &c. or any three of them, upon the ſame being notified to them upon oath, ſhall detain ſuch veſſel till the damage be aſcertained and adjuſted by three indifferent perſons upon oath; and, if it ſhall appear to them that the damage has been done through wilful default or neglect, they ſhall liquidate the ſum payable for the ſame, and return their adjudication, ſigned by them, unto the mayor, &c. who ſhall thereupon ſummon the maſter of ſuch veſſel, and demand payment; and, upon non-payment thereof, within three days after demand, they ſhall diſtrain the veſſel, and all her tackle, apparel, and furniture; and, within three days after, payment not being then made, the collector, or quay maſter, by a written order from the mayor, &c. ſhall ſell the ſame, &c. P. 506, 507.

All the monies to be raiſed by this act, and all penalties and forfeitures, ſhall be applied in cleanſing and keeping the harbour in order, and for keeping the bridge, wharfs, quays, and other publick buildings and works within the ſaid borough and town in repair, as the ſaid magiſtrates ſhall think requiſite.

None ſhall be exempted from keeping ſuch wharfs or quays in repair, which they were obliged to, by tenure or uſage, &c. before the making of this act.

This act ſhall be deemed a publick act, &c.

The firſt Table or Schedule referred to, viz. *Of Petty Cuſtoms, or Wharfage Duties, payable by Virtue of this Act.* S. 509, 510, 511, 512.

For every chaldron, *Wincheſter* meaſure, of coals, culm, cinders, grindſtones, and other goods, paying duties to the king by the chaldron, which ſhall be imported into, and exported from, the ſaid harbour of *Weymouth* and *Melcombe Regis*, 2d.

For every ton of tobacco-pipe clay, buſhel iron, and ſtone, except ſuch ſtone as ſhall be taken out of one veſſel into another in the ſaid harbour, 3d.

For every ton of ſalt, plaſter of *Paris*, terras, marble, lead, caſt and bar-iron, and all other goods, paying duty or freight by the ton, 6d.

For every load of fir timber, 3d.

For every load of walnut and mahogany timber and plank, 1s.

For every load of oak timber, or other timber, trenals, hoops, or other converted timber, 4d.

For every hundred of ſpars and uſers, 4d.

For

For every hundred of wainſcot boards, twelve feet in length, and one inch thick, and ſo in proportion, 1s.

For every hundred of double deals, 9d.

For every hundred of ſingle deals, 6d.

For every hundred of pipe-ſtaves, 2d.

For every hundred of hogſhead-ſtaves, 1d. 2q.

For every hundred of barrel-ſtaves, 1d.

For every buſhel of clover-ſeed, 2q.

For every quarter of malt, barley, and oats, 1d.

For every quarter of wheat, peas, tares, beans, and all other grains and ſeeds, 1d. 2q.

For every load of flour or meal, 10d.

For every load of bran, 3d.

For every hogſhead of beer, cyder, and vinegar, 1d. 2q.

For every hogſhead of brandy, rum, arrack, and other ſpirituous liquors, 4d.

For every hogſhead of wine, oil, or other liquors, 3d. and ſo in proportion for larger or ſmaller caſks.

For every hogſhead of melaſſes, containing a hundred gallons, and of fuller's earth and whiting, 6d.

For every hogſhead of tobacco, 8d.

For every butt of currants, and every hogſhead of ſugar, and other dry goods, 1s.

For every tierce of ſugar, or dry goods, 8d.

For every barrel of pitch or tar, 1d.

For every barrel of groceries, or other goods, contained in barrels of twenty gallons, 2d. and for ſmaller caſks, 1d.

For every crate, hamper, and cheſt of glaſs, and fine earthen ware, and for every load of coarſe earthen ware, 4d.

For every bundle, bale, pack, or parcel of linen or woollen, 2d. *per* hundred weight, and ſo in proportion for a greater or leſſer quantity.

For every hundred weight of rice, logwood, allum, ſhot, cordage, hemp, and flax, 3q.

For every hundred weight of raiſins, prunes, and figs, 1d.

For every hundred weight of ſpices, hops, gunpowder, cotton, wool, cheeſe, butter, tallow, colours, nails, chains, wrought leather, wrought iron, braziers' and pewterers' wares, and all other goods paying duty or freight by the hundred weight, 2d.

For every cheſt of oranges or lemons, 1d.

For every hundred feet of paving ſtones, 4d.

For every thouſand of tiles, bricks, or clinkers, and firkin ſtaves, 3d.

For every thouſand of ſlates, 1d. 2q.

For every groſs of bottles, either ſtone or glaſs, 3d.

For all goods not here enumerated, one twelfth part of what the uſual freight is, or ſhall hereafter be, from *London* to the port of *Weymouth*.

The ſecond Table, or Schedule, referred to, viz. Of Harbour Dues, and Ballaſt Duties, payable by Virtue of this Act, by, or from the Maſter of every Ship or Veſſel, or the Perſon having Charge of the ſame.

For every *Britiſh* ſhip or veſſel, not belonging to the inhabitants of the ſaid borough and town, which ſhall lade or unlade in the ſaid harbour, 2s.

For every ſuch ſhip or veſſel, which ſhall ſail into the ſaid harbour, and neither lade nor unlade there, 1s. 6d. and ſo in proportion for parts of ſhips or veſſels, not belonging to ſuch inhabitants.

For every ſhip or veſſel belonging to inhabitants of the ſaid borough and town, which ſhall lade or unlade in the ſaid harbour, 1s. and ſo in proportion for parts of ſhips or veſſels belonging to ſuch inhabitants.

For every foreign ſhip or veſſel which ſhall ſail into the harbour, and neither lade nor unlade there, 3s.

For

For every ſuch ſhip or veſſel which ſhall lade or unlade there, 1d. per ton, according to their light bills.

For every ton of ſtone taken out of one veſſel into another in the harbour, 1d. 2q.

For every ton of ballaſt taken into any ſhip from the quay, or otherwiſe, in the harbour, 1s.

For every ton of ballaſt put out of any ſhips on the quay, 4d.

For every ton of ballaſt put out of one ſhip into another in the harbour, 2d.

For every ton of ballaſt taken on board any foreign ſhip or veſſel, either from the quay, or in the harbour, 2s.

For every ton of ballaſt put out of ſuch ſhip or veſſel, 8d.

RAMSGATE *and* SANDWICH.

The preamble ſets forth, that frequent loſſes of the lives and properties of his majeſty's ſubjects happen in the *Downs*, for want of a harbour between the *north* and *ſouth Forelands*, the greateſt part of the ſhips employed in the trade of this nation being under a neceſſity, at going out upon, as well as returning from their voyage, to paſs through the *Downs*, and frequently, by contrary winds, being detained there a long time, during which they, eſpecially the outward bound-ſhips, are expoſed to violent ſtorms and dangerous gales of wind, without having any ſufficient harbour to lie in or retreat into, or from whence they can receive any aſſiſtance; and as a harbour may be made at the town of *Ramſgate*, convenient for the reception of ſhips, of and under 300 tons burden, and from whence larger ſhips in diſtreſs in the *Downs* may be ſupplied with pilots, anchors, cables, and other aſſiſtance and neceſſaries; and, by the ſmaller ſhips taking ſhelter in this harbour, the larger ſhips may take the anchorage, which, at preſent, is occupied by the ſmaller, and by that means their anchors will be fixed in more holding ground, and the ſhips not ſo expoſed to the ocean: For carrying therefore a work of ſuch public utility into execution, *It is enacted*, That the lord warden of the cinque ports, and his deputy for the time being, the right hon. *Robert* lord *Romney*, *Andrew Stone*, Eſq. the hon. *James Pelham*, Eſq. &c. ſhall be truſtees for the enlarging, building and maintaining the harbour at *Ramſgate*, by erecting piers or ſuch other works, and doing all other matters, as five, or more of them, at their general meeting, ſhall think moſt proper for putting in execution the powers of this act. 22 *Geo.* II. P. 799, 800, 801.

The firſt meeting of the truſtees ſhall be on the firſt *Tueſday* in *July*, 1742, in the *Guildhall* of the city of *London*; and five or more of them ſhall meet, from time to time, at ſuch places as they ſhall judge moſt convenient for carrying on and effecting the purpoſes of this act. P. 802.

Fifteen or more of the truſtees at a public meeting, fourteen days' notice whereof ſhall be given in the *London Gazette*, ſhall ſettle the ſeveral rates and duties herein-after mentioned, which ſhall commence from and after the 10th of *July* next enſuing, viz. Any rate or duty not exceeding 6d. per ton, to be paid by every *Britiſh* or foreign ſhip, veſſel or crayer of 20 tons burden or upwards, and not exceeding 300 tons, for every lading or diſcharging, or ſhip in ballaſt within this realm, from, to, or by *Ramſgate*, or coming into the harbour there, not having a receipt teſtifying the payment thereof before on that voyage, towards the building and maintaining of *Ramſgate* harbour: And, on every ſhip above 300 tons, any rate not exceeding 2d. for each ton of the burden of ſuch ſhip, except ſhips laden with coals, grindſtones, *Purbeck*, *Portland*, or other ſtones: And on every chaldron of coals, or ton of grindſtones, *Purbeck*, *Portland*, or other ſtones, a rate not exceeding 3d. And ſuch rates, when ſettled by the truſtees, ſhall be publiſhed in the *London Gazette*, for the information of all parties, and ſhall be paid to the cuſtomer, or collector of the cuſtoms, or their deputies, or other ſuch perſons as ſhall be appointed by the truſtees to receive the ſame; in ſuch port or place, whence ſuch veſſels or ſhips ſhall ſet forth, or where they ſhall arrive before their ſailing from ſuch port, on their outward-bound voyage, and before they unlade their goods on their homeward-bound voyage; the tonnage to be aſcertained according to the rules laid down in the act 8 *Ann.* intitled, *An act for making a convenient dock or baſon at* Liverpool, *for the ſecurity of all ſhips trading to or from the ſaid port of* Liverpool. See *Liverpool*. P. 173.

Foreign

Foreign ſhips, paſſing or being detained in the *Downs*, ſhall bu ſubject to the ſame rates as ſhips cleared out, or entered into any of the *Britiſh* ports, to be levied and recovered in the ſame manner as the other rates impoſed by this act. 22 *Geo* II. P. 803.

Where the tonnage of any veſſel, chargeable with the ſaid rates, cannot otherwiſe be ſettled and adjuſted, the collector, or ſuch perſon as five truſtees ſhall appoint, may enter into, and admeaſure ſuch ſhip, according to the directions of this act; and, if any perſon ſhall obſtruct the admeaſurement of ſuch ſhip, he ſhall forfeit 10l. for every ſuch offence, &c.

No veſſel, outward-bound, ſhall be cleared at the office of the cuſtoms, nor ſhall any veſſel be allowed to enter at the ſaid office, on a homeward-bound voyage, inward, without information on oath by the maſter or owner, of the burden of ſuch veſſel, &c. and after oath made, and payment of the duty, and producing an acquittance for the receipt thereof, the maſter or owner ſhall be allowed, from the merchant, for every ton of goods laden on board ſuch ſhip on his account, a like ſum per ton, as the ſame is charged by this act; and the cuſtomers or other officers, receiving the ſaid duties, ſhall keep an account thereof, &c. to which all perſons may have free acceſs at all ſeaſonable times *gratis*. And ſhall, once in every month in the port of *London*, and once in every three months in the out-ports, return and pay over the ſums received by them, &c. P. 804.

If any ſhip or veſſel, other than as before excepted, whether *Britiſh* or foreign, above 300 tons, ſhall, after the commencement of this act, take ſhelter in the harbour of *Ramſgate*, ſhe ſhall pay for every ton a like rate as ſhips of or under 300 tons, and above 19 tons are liable to, allowance being made to the maſter or owner for any rate paid before by him on that voyage, by virtue of this act, and ſuch ſhip ſhall ever after be liable to the ſame rates.

No coaſting veſſel or fiſherman ſhall pay the rates more than once in one year.

The collectors, &c. may go on board any veſſel, and demand the duties; and for non-payment may diſtrain ſuch veſſel, tackle, &c. and, in ten days after, make ſale thereof, &c.

If any maſter of any veſſel ſhall elude the payment of the ſaid duties, the ſame ſhall be recovered, as the fines and penalties are herein-after directed. P. 806.

Five or more truſtees and perſons employed by them, may remove any obſtructions that may be neceſſary to be taken away, for the enlarging, building, and maintaining the ſaid harbour at *Ramſgate*, or for the better attaining the purpoſes of this act, making ſatisfaction to the owners of the premiſes.

Five or more truſtees may contract for the making or doing all or any part of the work or buſineſs to be done in completing the ſaid harbour, and for timber, ſtones, or other materials, which ſhall be uſed therein; and they may agree with the owners and occupiers of all ſuch buildings, grounds, or eſtates, as ſhall be neceſſary for the execution of the purpoſes of this act.

All bodies politic or corporate, whether aggregate or ſole, and all feoffees in truſt, executors, adminiſtrators, guardians, or truſtees whatſoever, for, or on behalf of, any infants, femes covert, or ceſtique-truſts, and all perſons ſeized, poſſeſſed of, or intereſted in any lands, tenements, or hereditaments, which ſhall be judged neceſſary for the purpoſes aforeſaid, are impowered to agree with the truſtees, or five or more of them, at any of their public meetings appointed for the ſale thereof, and to ſell and convey the ſame; and all contracts and conveyances, which ſhall be ſo made for the purpoſes aforeſaid, ſhall be valid to all intents and purpoſes. P. 807.

And all feoffees in truſt, executors, &c. are indemnified for what they ſhall do by virtue of this act; and, if it ſhall happen that any perſon, body or bodies politic or corporate, ſhall decline, or refuſe to treat, or agree about the ſale of the ſaid lands and tenements, five or more truſtees ſhall iſſue their warrant to the ſheriff of the county, to ſummon and return a jury of twenty-four perſons qualified to be returned for trials of iſſue joined in any of the courts at *Weſtminſter*, to appear before them at the time and place appointed, and alſo to return iſſues upon every ſuch perſons, the ſum of 40s. which ſhall be duly eſtreated and levied; and, for default of a ſufficient number of jurymen appearing, the ſheriff, or his deputy, ſhall return twelve indifferent men of the ſtandards-by, or that can be ſpeedily procured, to make up the jury, who ſhall view the lands and

and tenements in queſtion, and ſhall, upon their oaths, which oaths, and alſo proper oaths to ſuch perſons as ſhall be examined as witneſſes, five or more of the truſtees, ſhall adminiſter, enquire into the value thereof, and aſſeſs ſuch damages and recompence for the ſame as they ſhall think fit; and the truſtees ſhall give judgment for the ſums to be aſſeſſed by ſuch jury; which verdict, and the determination thereupon pronounced by five or more truſtees, and the recompence aſſeſſed, twenty days notice at leaſt in writing of the time and place for their meeting being firſt given to every perſon concerned, or left at his or her dwelling-houſe, or uſual place of abode, or with ſome tenant or occupier of ſome land or tenements of the party near the harbour of *Ramſgate*, in caſe ſuch party cannot be found to be ſerved with ſuch notice, ſhall be binding to all intents and purpoſes, againſt all parties whatſoever; and the ſaid decrees ſhall be ſet down in writing under the hands and ſeals of the truſtees, who ſhall make the ſame; and kept amongſt the records of the ſeſſions for the county of *Kent*, and the ſame, or copies thereof, ſhall be admitted as evidence in all courts of law or equity: And, upon payment or tender of ſuch ſum to the parties, at his or their dwelling-houſe, or, if they have none, at the houſe of ſome tenant or occupier of ſome lands of the party, near the ſaid harbour of *Ramſgate*, and, in caſe of their refuſal, upon payment of the ſaid ſum into the hands of ſuch perſon as five truſtees ſhall appoint, for the uſe of the parties intereſted; it ſhall then, and not before, be lawful for the truſtees, or their workmen, to make uſe of the ſaid lands as they ſhall think requiſite for the purpoſes of this act, and they are indemnified againſt the ſaid owners and occupiers, &c. 22 *Geo.* II. P. 108, 109.

If the truſtees ſhall build any works relating to the ſaid harbour, upon any lands or tenements, the property whereof is not, at or before ſuch time, claimed or aſcertained; and, if any perſon ſhall afterwards claim the ſame, and prove his title thereto, then the value thereof, before the works were erected, ſhall be aſcertained by a jury in manner before directed; and, upon payment, or tender of the money that ſhall be aſſeſſed, the property of ſuch perſon in the ſaid lands ſhall ceaſe, and the ſame be veſted in the truſtees. P. 810.

Fifteen, or more, truſtees may borrow any ſum not exceeding 70,000l. for the purpoſes aforeſaid, and aſſign over the duties as a ſecurity for repayment of the ſame, with intereſt not exceeding 5l. *per centum per annum:* and the ſame ſhall be applied towards the enlarging and completing the ſaid harbour; the charges of paſſing this act to be firſt paid. P. 811.

Any perſon may advance the whole, or any part of the ſaid ſum of 70,000l. for the abſolute purchaſe of annuities, to be paid for the natural lives of ſuch perſons as ſhall be nominated by the contributors at the time of payment of their reſpective contribution-monies; the ſaid annuities not to exceed the rate of 8l. 10s. *per annum*, for every 100l. and to be payable at the bank of *England*, or at ſuch other place in *London*, as fifteen or more of the truſtees ſhall direct, to the purchaſers, their executors, adminiſtrators or aſſigns, at ſuch times and in ſuch proportions, as ſhall be agreed upon.

The rates ſhall not be liable to the payment of the intereſt of any greater ſum than 50,000l. at any one time, upon annuities for lives.

One or more books ſhall be provided and kept by the truſtees, in which ſhall be entered the names and places of abode of the purchaſers of any of the ſaid annuities, and of all perſons by whoſe hands they ſhall pay in any ſum upon this act, and alſo of the perſons for whoſe lives the annuities ſhall be purchaſed, and the purchaſe-money, and days of payment; to which books the reſpective purchaſers, and perſons impowered by them, ſhall have recourſe, at all ſeaſonable times, *gratis*; and if any doubt ariſes, as to the life of any perſon, on which an annuity ſhall be payable, five or more truſtees may depute any perſon, before each payment, to viſit ſuch annuitant; and, if ſuch perſon ſhall be refuſed admittance to the ſaid annuitant, at any ſeaſonable time, the annuity ſhall from ſuch time ceaſe, till the life of the ſaid annuitant be proved to five or more truſtees at their publick meeting, either by his or her perſonal appearance, or by the oaths of two credible witneſſes; when the ſaid annuity, together with the arrears, ſhall be paid. P. 812.

The ſaid annuities ſhall be paid out of the monies ariſing by the duties of this act, and the contributors, their executors, and aſſigns, ſhall enjoy the annuities, during the

the natural lives of the perſons nominated by them, and ſhall have abſolute and indefeazable eſtates therein; and the ſame ſhall be free from all taxes.

The contributors, or their aſſigns, upon payment of the conſideration-money, or any part thereof, unto fifteen truſtees, or to ſuch perſon as they ſhall appoint, ſhall have receipts for the ſame; and, upon payment of the purchaſe-money, ſhall have an order in parchment for payment of the annuity, during the natural life of the perſon nominated, in which ſhall be inſerted, how much the ſum paid by ſuch contributor, together with the other ſums paid in on annuities before that time, do amount to, that it may be known how nearly the ſaid ſum of 70,000l. is complete, and when it ſhall be completed; which order ſhall be made by five or more truſtees at a publick meeting, and, after ſigning thereof, ſhall be good in law. 22 *Geo.* II. P. 813.

The annuitants, or their aſſigns, may, from time to time, aſſign over the ſaid annuities, or any part thereof; and an entry thereof ſhall be made *gratis*, in a book to be kept by ſuch perſon as five or more of the truſtees ſhall appoint for that purpoſe, at the charge of the truſtees, in ſuch place within *London* as fifteen or more truſtees ſhall appoint.

The rates ſhall be chargeable with the payment of the annuities; and, upon default of payment thereof, within forty days after the times they ſhall be made payable, they ſhall veſt in the annuitants until the ſame be paid, with intereſt, and the charges occaſioned thereby; and they ſhall have the ſame power, &c. of collecting and levying the ſaid duties as the truſtees were inveſted with. P. 814.

The money ariſing by ſale of the annuities ſhall be applied in the firſt place, in paying off monies borrowed at intereſt, as aforeſaid; and afterwards for diſcharging the expences of enlarging and building the ſaid harbour.

The truſtees ſhall meet once in every year, fourteen days notice whereof ſhall be given in the *London Gazette*; and they, or fifteen or more of them, at ſuch meeting, ſhall examine what annuities have determined during the preceding year, and ſhall aſcertain the rates neceſſary to be raiſed for the ſucceeding year; and the ſame ſhall be levied according to the proportions before mentioned, and ſhall be advertiſed in the *London Gazette*; but, if they ſhall continue the rates of the ſucceeding year or years, according to the proportion of the former year, or ſhall neglect or refuſe to meet for the purpoſes aforeſaid, then the rates ſhall be levied according to the proportion directed by the laſt advertiſement in the *London Gazette* for that purpoſe, which ſhall be the rule to go by, until the ſaid rates ſhall be again aſcertained and publiſhed according to the directions of this act. P. 815.

As ſoon as the ſum of 70,000l. ſhall be raiſed and paid to the truſtees, by granting annuities, and the intereſt of the ſeveral annuitants ſhall ceaſe by their deaths, the duties granted by this act ſhall abſolutely ceaſe and determine; and if, after the determination of the annuities, and finiſhing the ſaid harbour, any ſurplus ſhall remain in the hands of the truſtees, the ſame ſhall be paid into the chamber of *London*, and an account thereof be laid before the parliament at their then next ſitting.

Fifteen or more of the truſtees may appoint collectors, a ſurveyor, treaſurer, &c. of the duties, and appoint them ſalaries, and diſplace them at pleaſure. P. 816.

They are to take ſecurity for ſuch officers, and meet once yearly to examine and audit their accounts.

The accounts ſo ſtated and ſigned by the truſtees ſhall be laid, within three months after, before the mayor and court of aldermen in *London*, and ſuch four as the court ſhall appoint, not being truſtees, may ſummon, and examine upon oath, every perſon they ſhall think fit; and, finding any one guilty of embezzlement or miſapplication of the ſaid money, they ſhall impoſe on him any fine, not exceeding double the ſum embezzled. P. 817.

The ſaid fines ſhall be levied by diſtreſs, &c. and in default of ſuch diſtreſs, the offender ſhall be committed to the common gaol of the county, where he ſhall live, until payment, &c.

If the truſtees ſhall erect a baſon in the ſaid harbour, every veſſel before ſhe goes into the gates, ſhall take down her ſails, ſo that ſhe may not go ſailing in; upon pain of forfeiting 10l.

If the baſon ſhall be ſo filled with ſhipping, as not to admit, with ſafety, more veſſels, five or more truſtees, or ſuch perſon as they ſhall appoint, may remove into the harbour ſuch ſhip or veſſel, as he or they ſhall think proper, the maſter, within twenty-four hours after notice in writing given to him, or left on board his ſhip for that purpoſe, neglecting to remove the ſame within a convenient time; thoſe veſſels to be firſt removed out of the baſon, as ſhall be laid up or moored, or are not upon an outward or homeward-bound voyage; next, ſuch as are upon an outward or homeward-bound voyage, but which may with the leaſt danger be removed, and lie in the ſaid harbour; that ſhips coming in, and leſs capable of taking the ground, may have the benefit of the baſon; and the ſaid maſter ſhall pay the charges of removing ſuch veſſel, to be levied and applied as the fines and penalties are directed by this act. 22 *Geo.* II. P. 819.

If any maſter, or other perſon, ſhall obſtruct the removal of ſuch ſhip, he ſhall forfeit 100l. And if any perſon employed by the truſtees, ſhall wilfully abuſe his authority of removing ſuch ſhips, and ſhall be judged ſo to have done, by five or more of the truſtees, &c. they ſhall impoſe any fine on him, not exceeding 100l. &c. P. 820.

If any truſtee ſhall die, or refuſe to act, nine or more of the remaining truſtees may appoint others, &c.

The property of all the piers, docks, wharfs, and other works, and alſo of the ground whereon ſuch works ſhall be erected, as well as all ſuch right and property, as now appertaineth to the ſaid pier or harbour of *Ramſgate*, ſhall be veſted in the truſtees; and they, or five, or more of them, may bring actions, and prefer bills of indictment, againſt any perſons who ſhall ſteal, break down, or ſpoil any of the works or materials, or do any thing whereby damage may accrue to the works or harbour; and they may let out, for the beſt rent that can be had, ſuch wharfs, docks, or lands, as are veſted in them, for any term not exceeding ſixty years, the rent to be applied towards enlarging and completing the ſaid harbour; and upon the expiration of the ſaid truſts, and determination of the leaſes, the property of the ſaid piers, docks, wharfs, and other works, and alſo of the ſaid lands, tenements, or hereditaments, ſhall be veſted in, and diſpoſed of by authority of parliament. P. 821.

The truſtees, in the letting ſuch wharfs, docks, or other works, ſhall expreſsly mention what ſums ſhall be taken by the reſpective tenants, of the maſter of any veſſel which ſhall occupy the ſame; and, if the tenant ſhall demand or take more than the ſum ſtipulated, he ſhall, for every ſuch offence, forfeit treble the ſum demanded, more than he ſhall be allowed to take by ſuch agreement, &c.

All the receipts, payments, debts, credits, and contracts, made with and by the artificers and workmen employed, and alſo an account of all monies received and borrowed, and all other proceedings of the truſtees, ſhall be entered into one or more books, &c. P. 822.

No truſtee ſhall have any office, or place of profit ariſing by any of the ſaid duties; and the truſtees ſhall at all their meetings, defray their own expences, and ſhall give ſuch publick notice of their meetings, as ſhall be agreed upon by five or more of them.

From and after the firſt *Tueſday* in *July*, 1749, all duties on ſhipping, which may have heretofore been demanded at the port of *Ramſgate*, under any pretence whatſoever, ſhall abſolutely ceaſe; and no demand ſhall be made of any duty, other than what is made payable by this act.

This act ſhall not extend to charge with any of the ſaid rates or duties, any ſhip or veſſel, which ſhall be bound to or from the town of *Sandwich*, in the county of *Kent*; the maſter producing a certificate verified upon oath, under the hand or ſeal of the mayor of *Sandwich*, atteſting that the inhabitants of the ſaid town own the whole or major part of ſuch veſſel; and all ſuch veſſels may paſs in and out of the harbour without paying duty. P. 823.

Out of the money ariſing by the rates, the treaſurer or receiver ſhall pay 200l. *per annum*, during the continuance of this act, into the hands of the mayor and jurats of *Sandwich*, or to ſuch perſons as they ſhall authorize to receive the ſame, by four equal quarterly payments, viz. upon *September* 29, *December* 25, *March* 25, and *June* 24; the firſt payment to be made upon the 29th of *September*, 1749; the ſaid money to be applied, in the firſt place, in diſcharging the expences incurred by the

the corporation of *Sandwich*, on account of applying for, or making this act, or in any manner relating thereto; and afterwards in cleanſing, depthening, and preſerving the ſaid haven, or in erecting and maintaining a pier, or ſuch other works for that purpoſe, as the mayor and jurats ſhall, by writing under their hands and ſeals, direct; and, if the ſaid ſum ſhall not be paid within fourteen days after it ſhall become due, the mayor and jurats may recover the ſame againſt the ſaid treaſurer or receiver, together with the damages ſuſtained by the non-payment, and full coſts of ſuit by action of debt, bill, &c. 22 *Geo.* II. P. 824.

The receipt of the ſaid mayor and jurats, or of ſuch perſon as they ſhall appoint to receive the ſaid ſum, ſhall diſcharge the ſaid treaſurer or receiver for the payment thereof.

The ſaid mayor and jurats ſhall cauſe a book or books to be kept of the dates and ſums of money received and diſburſed, and of all their proceedings, in execution of the truſt hereby repoſed in them; to which books all perſons intereſted ſhall have free acceſs *gratis*, &c. P. 825.

From and after the 24th of *June*, 1749, no more than two veſſels ſhall lie abreaſt in the ſaid haven longer than one tide, unleſs upon ſome unavoidable occaſion, of which the mayor ſhall judge, and ſhall take ſuch order therein as he ſhall think reaſonable; and if the maſter of any veſſel ſhall not obey ſuch order of the mayor for removing his ſhip, he ſhall forfeit any ſum not exceeding 40s. &c. P. 827.

If it ſhall appear to the truſtees, or fifteen of them, that it will be for the benefit of the trade and navigation of this kingdom, to erect any works at the haven of *Sandwich*, more than the annual ſum of 200l. will be ſufficient for; they may, at any meeting to be held for that purpoſe, fourteen days notice thereof being given in the *London Gazette*, order any ſum not exceeding 10,000l. out of the duties aforeſaid, to be applied to that purpoſe.

All veſſels belonging to the towns of *Dover*, *Weymouth*, and *Melcombe Regis*, *Lyme Regis*, and *Great Yarmouth*, ſhall be exempted from payment of the duties aforeſaid, the maſters or owners producing a certificate, verified upon oath before the reſpective mayors of the ſaid places, that the ſaid veſſels belong thereto, and that the inhabitants are owners of the greateſt part of ſuch ſhips.

This act ſhall be deemed a publick act, &c.

BEVERLEY BECK, *and* HULL.

By 13 *Geo.* I. ſeveral ſmall tolls and duties were laid on divers goods and merchandizes, which, after *May* 1, 1727, ſhould be laden or unladen on or from any ſhip, boat, or other veſſel, in any part of the ſaid beck, or at any publick ſtaiths, or other places along the ſaid beck, or river *Hull*, and payable to the mayor, aldermen, and capital burgeſſes of *Beverley*, and their ſucceſſors, or to the perſon by them appointed, to be applied for the purpoſes in the act mentioned; and, ſince paſſing the ſaid act, a conſiderable ſum hath been borrowed on the tolls thereby granted; which, though applied with the income of the tolls and duties, according to the directions of the act, is inſufficient to anſwer the intention; and the beck is now in great danger of being choaked, by the ſludge and ſoil brought by the tide, and earth falling in from the banks, which muſt be repaired and ſupported by piles and other works; and, as the *cleanſing*, *deepening*, and *preſerving* the ſaid creek, and amending and maintaining the banks, ſtaiths, roads, and ways, will require more money than can be raiſed by the preſent duties, which are in many reſpects unequal, and not duly proportioned to the value of goods; therefore, for better enabling the mayor, &c. of *Beverley*, to perform the things before-mentioned, *It is enacted*, that, after *May* 1, 1745, there ſhall be paid for the purpoſes aforeſaid, by every maſter or other perſon, having management of any ſhip, or other veſſel, paſſing up or down the ſaid beck, or river *Hull*, to lade or unlade goods, at any part of the beck, or publick ſtaiths; or at *Gravel* or *Beck-End*, or between *Foggan Clow* and *Swinners Clow* on the river *Hull*, or at any places along the

the ſaid beck or river, within the limits of *Beverley*, before unlading, or having laden, before they go out of the liberties aforeſaid, over and above the tolls payable by the former act, theſe additional duties, viz. 18 *Geo.* II. P. 411, 412, 413, 414, 415.

For every chaldron of coals, *Wincheſter* meaſure, 2d.
For every quarter of oats, barley, or malt, 1q.
For every quarter of wheat, rye, meſsledine, beans, peas, rapeſeed, hempſeed, Linſeed, or any other kind of ſeed or grain, 1q.
For every hundred weight of flour, 3q.
For every hogſhead of ſalt, 4d.
For every ton of ſalt in bulk, 2d.
For every 3 hogſheads of ſugar, tobacco, melaſſes, or other goods packed in hogſheads, 8d.
For every 4 hogſheads of wine or rum, 1s. 8d.
For every hogſhead of brandy, or other ſpirits, 4d.
For every 8 barrels of ſoap, raiſins, oil, pitch, tar, or packed with other dry goods, 4d.
For every butt of currants, 8d.
For every 2 pipes of *Smyrna* raiſins, 8d.
For every 16 bags of Nails, 4d.
For every ton of iron or lead, 8d.
For every 32 firkins of butter, 4d.
For every 20 hundred of cheeſe, 7d.
For every ton of timber or ſtone, 2d.
For every 2 bags of hops, 8d.
For every quarter of oatmeal, 2q.
For every hundred of pipeſtaves, 1d. 2q.
For every dozen of cinders or charcoal, 2q.
For every 20 ſheep ſkins, 1q.
For every quarter of bark, 1q.
For every pack of wool, or other goods, 1d.
For every 12 dozen of bottles, 1d.
For every 4 buſhels of roots, or fruit, 2q.
For every ton of hemp, lime, or flax, 7d.
For every quarter of ſerne aſhes, 2d.
For every ſmall runlet of liquor, not exceeding 10 gallons, 1q.
For every ſmall caſk or parcel, not exceeding 112 pounds, 1q. and ſo in proportion for a greater or leſs quantity or weight of any of the abovementioned goods, &c.

And for every ton of any other ſort of goods or ladings not mentioned, according to the cuſtom of water tonnage, 12d. And ſo in proportion for any greater or leſs quantity, except cobbles or pebbles for repairing cauſeways in the town or liberties.

Which tolls and ſums ſhall be paid to the mayor, aldermen, and capital burgeſſes of *Beverley*, and their ſucceſſors, or to a perſon by them appointed to receive them, and, after deducting the neceſſary charges of obtaining this act, be applied, with the duties granted by the former act, to pay the debt, and cleanſe and preſerve the beck, and repair and keep up the banks, ſtaiths, and roads, and to no other uſe.

The powers, proviſoes, penalties, &c. in the former act contained, relating to the tolls thereby granted, and not hereby repealed or altered, ſhall be in force from *May* 1, 1745, and extend to the additional tolls hereby granted, and to every perſon whom the ſame or this preſent act may concern. P. 415

In caſe any perſon, having management of any ſhip or veſſel, paſſing up or down the river *Hull* or the beck, laden or unladen, and who by the former act is obliged to give in a true account in writing of the quantity of goods, or number of tons, with which he is laden, ſhall give in a falſe account thereof, being convicted on oath before the mayor, or any two juſtices of the ſaid town, ſhall forfeit 20s. &c. and ſhall alſo pay the duties by the ſaid acts made payable for all ſuch goods as remain in ſuch veſſels, which he ſhall not have given an account of, or paid duty for; but ſuch perſon ſhall not be ſubject to the forfeiture of 20s. unleſs his lading exceed three tons more than he ſhall have given an account of, or paid duty for. P. 416.

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The receiver, or collector, appointed by the mayor, &c. of *Beverley*, may enter into any ſhip or veſſel which ſhall paſs up or down the ſaid beck, or river *Hull*, within the liberties aforeſaid, and ſearch, and take an account of the lading thereof; and, for diſcovery of any goods, &c. chargeable with theſe duties, and the quantities thereof, may open, bore, gauge, weigh, and meaſure any thing laden in ſuch veſſel; and taſte liquor, meaſure coals, and weigh or meaſure other goods, finding proper weights, meaſures, and inſtruments, for the purpoſes aforeſaid, and making ſatisfaction for any loſs or damage done to goods thereby; and, for the like diſcovery, to meaſure and mark the portage or tonnage of any veſſel uſually paſſing within the ſaid liberties; And if any maſter of ſuch veſſel, or other perſon, ſhall hinder ſuch collector, or other perſon appointed to enter ſuch veſſel, to ſearch or take an account of the lading thereof, or of the ſorts or quantities of goods, by any means aforeſaid, or to meaſure or mark the portage, &c. the maſter or perſon ſo offending ſhall forfeit 20s. &c. 18 *Geo.* II. P. 417.

Nothing in this act ſhall take away or leſſen duties, which, before making this and the former act, were payable to the mayor, &c. of *Beverley* at the river *Hull*, or *Beverley* Beck, or otherwiſe; but the ſame ſhall continue to be paid on all ſorts of goods and merchandizes as before.

The remainder of this act is concerning the roads, and cleanſing the ſtreets, which, having no relation to the ſubject I am treating of, is omitted, &c.

KIRKCALDY.

The town of *Kirkcaldy* is ſaid to be well ſituated for carrying on a foreign trade, having coal and ſalt works near adjoining, and that an improved trade would be very beneficial both for the town and country; but theſe advantages cannot be had, unleſs the harbour, which is very ruinous be repaired and made commodious, which will require a larger ſum than the revenue of the town will anſwer, *It is therefore enacted*, that, after *June* 1, 1742, for the term of twenty-five years, and to the end of the then next ſeſſion of parliament, a duty ſhall be paid of two pennies *Scots*, or one ſixth part of a penny ſterling, beſides the duty paid to his majeſty, on every *Scots* pint of beer or ale, either brewed, brought in, tapped, or ſold in the town or liberties of *Kirkcaldy*; the duty to be paid by the brewers for ſale, or the ſellers of the ſaid liquors, to the magiſtrates and town council, or ſuch receivers as they ſhall appoint. 15 *Geo.* II. P. 119, 120.

The provoſt, bailiffs, and council, are appointed truſtees to repair and keep in repair the ſaid harbour, and other public works, as they ſhall think proper, and to collect, receive, and diſpoſe of the money ariſing by the duty, appoint proper officers, to guage the veſſels and worts, which the brewers ſhall permit in the ſame manner as the officers of exciſe are permitted. P. 121.

The truſtees are impowered to make orders and give directions for guaging, collecting, and diſpoſing of the money ariſing by the duty as they ſhall think moſt proper for the purpoſes hereby granted, and to appoint collectors, who ſhall diſpoſe of the collected money, as the majority of the truſtees ſhall direct, for repairing and maintaining the harbour and other public works.

Proper books ſhall be kept by order of the truſtees, wherein the particulars of all diſburſements ſhall be entered; and once every year, the firſt being thirty days after the ſaid firſt day of *June*, 1742, and ſo ſucceſſively every year, the accounts ſhall be fairly drawn out and ſtated by the collectors, and delivered to the majority of the truſtees on oath, which oath any one of the truſtees has power to adminiſter. P. 122.

And for the more ſpeedily effecting the purpoſes of this act, the majority of truſtees, by an act of the town-council, may borrow money, and aſſign over the duty as a ſecurity to the lenders, at common intereſt.

Perſons not paying the duty when demanded, may be ſummoned before any of the magiſtrates; and, if they do not then appear, or pay the duty, any one of the magiſtrates may make an order for the payment; and, if they refuſe to pay three days after notice of ſuch order, the collectors may have a warrant to diſtrain; and if payment be

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not made ten days after the diſtreſs they may ſell the ſame, and deduct for reaſonable charge, not exceeding a fifth part of the ſum diſtrained for, rendering the overplus to the owner, if any be, and demanded. 15 *Geo.* II. P. 123.

Any ale or beer brought in, or ſold in the ſaid town and privileges, having not paid the duty, ſhall be forfeited, with the caſk for the uſe of the town.

If any diſpute ariſe between the ſellers and collectors, the differences ſhall be decided by the vouchers taken by the exciſe officers; and the exciſe officers are required to give authentic copies of the ſaid vouchers once in ſix weeks to ſome of the truſtees or their collectors, for that purpoſe.

If any conceal or embezzle any wort, ale, or beer, to avoid paying the duty, the parties convicted before any two of the magiſtrates ſhall forfeit the value of what ſhall be concealed, and ten pounds *Scots* for the court charges, for which diſtreſs may be made. P. 124.

The majority of truſtees, with conſent of the overſeers after-named, may farm out the duty for the beſt price they can get, and apply the money as this act directs.

The right hon. *John*, earl of *Rothes*, the right hon. *James*, earl of *Morton*, the right hon. *James*, earl of *Murray*, &c. or any three, are appointed overſeers of the duty, and receipts and diſburſements thereof, and ſhall meet on the firſt *Wedneſday* in *Auguſt*, 1743 at *Kirkcaldy*, and ſo ſucceſſively, on the firſt *Wedneſday* in *Auguſt* yearly, and adjourn as they ſhall think proper, to examine the diſburſements, and the application thereof: And, if the major part of the ſaid overſeers preſent ſhall find any miſapplication of the money, or other abuſe of the powers granted by this act, they may adjudge the offenders, or embezzlers, to pay the value of what is embezzled, with full coſts and damages; which ſentence ſhall be final; and, if any of the overſeers ſhall die, remove, or refuſe to act, any three of the remaining overſeers may chuſe others in their places. P. 125.

No diſtreſs taken by authority of this act, ſhall any ways affect the king's duty of exciſe; nor ſhall any perſons be charged with any quantity of wort, if it ſhall appear that the duty hereby made payable has been once paid.

This act ſhall be deemed a public act, and ſhall be judicially taken notice of, &c. P. 126.

ANSTRUTHER-EASTER.

In the preamble it is ſaid, that a great trade has been carried on in the town of *Anſtruther-Eaſter*, in the county of *Fife*, in *Scotland*, particularly of fiſhery, and that a cuſtom-houſe has been erected there for many years, on account of the commerce of the ſaid town, and that the harbour thereof is very ſafe and convenient for ſhips, and eſteemed the moſt commodious in that part of the country; and, it having been judged neceſſary, for the improvement and preſervation of the ſaid harbour, as alſo for facilitating the ſailing of ſhips in and out with more ſafety, that a croſs pier ſhould be erected, which was accordingly begun, and ſome progreſs made therein; but, as the completing the ſame will require a larger ſum than the revenue of the town will anſwer, *It is therefore enacted*, that after *Auguſt* 1, 1749, for the term of twenty-five years, and to the end of the then next ſeſſion of parliament, a duty of two pennies *Scots*, or one-ſixth part of a penny ſterling, beſides the duty payable to his majeſty, ſhould be laid on every *Scots* pint of ale or beer either brewed, brought in, tapped, or ſold in the town or liberties of *Anſtruther-Eaſter*; the duty to be paid by the brewers for ſale, or the ſellers of the ſaid liquors, to the magiſtrates and town-council, or ſuch collectors or receivers as they ſhall appoint; And the ſaid magiſtrates and town-council, and their ſucceſſors in office for the time being, are appointed truſtees to clean, deepen, rebuild, repair, and improve the ſaid harbour and piers, and for executing all other powers given by this act; and the money raiſed by the ſaid duty ſhall be veſted in the truſtees, and be applied to the ſeveral purpoſes aforeſaid, the charges expended in paſſing this act being firſt deducted. 22 *Geo.* II. P. 299, 300.

The truſtees are to appoint proper officers to guage the brewers' veſſels and worts, which the brewers ſhall permit in the ſame manner as the officers of exciſe are permitted. P. 301.

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The truſtees are impowered to make orders, and give directions for guaging the veſſels, and collecting and diſpoſing of the money ariſing by the duty, as they ſhall think moſt proper for the purpoſes hereby granted; and ſhall be paid to the collectors appointed, who ſhall diſpoſe of the collected money as the majority of truſtees ſhall direct, for the purpoſes aforeſaid, and to no other uſe.

Proper books ſhall be kept, by order of the truſtees, wherein an account of all receipts and diſburſements ſhall be entered; and alſo for what uſe the payments were made; and once every year, viz. within thirty days after the ſaid firſt day of *Auguſt*, 1749, and ſo ſucceſſively every year, the accounts ſhall be fairly drawn out, and ſtated by the collectors, and delivered to the majority of truſtees on oath; which oath any one of the truſtees is to adminiſter. 22 *Geo.* II. P. 302.

And for the more ſpeedily effecting the purpoſes of this act, the majority of truſtees, by an act of the town-council, may borrow money, and aſſign over the duty as a ſecurity to the lenders, at legal, or leſs intereſt, the charges thereof to be paid out of the duty; and the money ſo borrowed ſhall be applied in the firſt place, to pay off the charges of obtaining this act, and then for the purpoſes aforeſaid.

Perſons not paying the duty when demanded, may be ſummoned before any of the magiſtrates; and if they do not then appear or pay the duty, any one of the magiſtrates may make an order for the payment; and, if they refuſe to pay, three days after notice of ſuch order, the collectors by warrant, may diſtrain, &c. P. 303.

Any ale or beer brought in, or ſold in the ſaid town and privileges, having not firſt paid the duty, ſhall be forfeited, with the caſk, for the uſe of the harbour.

If any diſpute ariſe between the ſellers and collectors, touching the quantity of wort or beer chargeable, the difference ſhall be decided by the vouchers taken by the excife officers, &c. P. 304.

If, after *Auguſt* 1, 1749, any perſon ſhall conceal or embezzle any wort, ale, or beer, to avoid paying the duty, the offender ſhall forfeit the value of what is concealed, and ten pounds *Scots*, for which diſtreſs may be made.

The majority of the truſtees, with conſent of the overſeers after named, may farm out the duty by way of public roup, for the beſt price they can get, and apply the money as this act directs.

Sir *John Anſtruther* of *Anſtruther*, baronet, *John Anſtruther* the younger of *Anſtruther*, Eſq. Sir *Philip Anſtruther*, of *Balkaſkie*, baronet, &c. or any three, are appointed overſeers of the duty, &c. and ſhall meet on the firſt *Wedneſday* in *Auguſt*, 1750, at *Anſtruther-Faſter*, and ſo ſucceſſively on the firſt *Wedneſday* in *Auguſt* yearly, and adjourn as they ſhall think proper, to examine the receipts and diſburſements, and the application thereof; and, if the major part of the ſaid overſeers preſent ſhall find any miſapplication of the money, or other abuſe of the powers granted by this act, they may examine the party and witneſſes, and make ſuch an order upon conviction as they ſhall judge reaſonable, and adjudge the offenders to pay the value of what is embezzled, with coſts, &c. P. 305.

No diſtreſs, taken by authority of this act, ſhall any ways affect the king's duty of excife.

This act ſhall be deemed a public act, and ſhall be judicially taken notice of as ſuch by all perſons whatſoever.

KINGHORN.

In the preamble it is ſaid, that the harbour of the town of *Kinghorn*, in the county of *Fife*, has not only been of great advantage to the ſaid town, but to the whole of that part of the united kingdom of *Great-Britain*, and thoſe advantages cannot be continued and eſtabliſhed unleſs the harbour, which has been for ſome years laſt paſt, and now is, in a ruinous condition, be effectually repaired, and made commodious for ſhipping, and all ſuch perſons as ſhall make uſe thereof; and as the whole revenue of the town, applicable towards the repairing of the ſaid harbour, is not near ſufficient to keep the ſame in good repair, *It is therefore enacted*, that after *June* 1, 1749, a duty of two pennies

Scot,

Scots, or one-ſixth part of a penny ſterling, beſides the duty of exciſe payable to his majeſty, ſhould be laid on every *Scots* pint of ale and beer, either brewed, brought in, tapped, or ſold in the town or liberties of *Kinghorn*, &c. 22 *Geo.* II. P. 351.

The provoſt, bailiffs, and council of the town of *Kinghorn*, &c. are appointed truſtees for the re-building or amending, and keeping the ſaid harbour in repair, and for collecting and diſpoſing of the money ariſing by the ſaid duty; and the majority of them are impowered to appoint officers to guage the brewers' veſſels, worts, ale and beer, which the brewers ſhall permit to be done in the ſame manner as the officers of exciſe are permitted, P. 352.

The truſtees, or a majority of them, are impowered to make orders, and give directions for guaging the veſſels, and collecting and diſpoſing of the money ariſing by the duty, as they ſhall think moſt proper for the purpoſes hereby granted; and the ſame ſhall be paid to the collectors appointed, who ſhall diſpoſe of the collected money as the majority of truſtees ſhall direct, towards the re-building or repairing the harbour, and for preſerving the ſame, and other public works of the town, the charges of paſſing this act being firſt deducted, and to no other uſe. P. 353.

Proper books ſhall be kept by order of the truſtees, wherein an account of all receipts and diſburſements ſhall be entered, &c. and once every year, viz. within thirty days after the firſt day of *June*, 1749, and ſo ſucceſſively every year, the accounts ſhall be fairly drawn out and ſtated, &c. P. 354.

And for the more ſpeedily effecting the purpoſes of this act, the majority of truſtees, by an act of the town council, may borrow money, and aſſign over the duty as a ſecurity to the lenders, at legal or leſs intereſt, the charges thereof to be paid out of the duty; and the money ſo borrowed ſhall be applied, as the duty ariſing by this act, for the purpoſes aforeſaid.

Perſons not paying the duty when demanded, may be ſummoned before any of the magiſtrates, who may diſtrain for it, and ſell the diſtreſs, &c. P. 355.

Any ale or beer brought in, or ſold in the ſaid town, &c. having not firſt paid the duty, ſhall be forfeited, &c.

If any diſpute ariſe between the collectors and ſellers, &c. it ſhall be decided by the vouchers taken by the exciſe officers, &c.

If after the firſt of *June*, 1749, any perſon ſhall conceal or embezzle any wort, &c, the offender, on conviction, ſhall forfeit the value, and ten pounds *Scots*, &c. P. 356.

The majority of truſtees may farm out the duty by way of public roup, for the beſt price they can get, and apply the money as this act directs.

John Saint Clair of *Saint Clair*, the honourable lieutenant-general *James Saint Clair* of *Innertiel*, *Robert Ferguſon* of *Reath*, &c. Eſqrs. or any three, are appointed overſeers of the duty, &c. and ſhall meet on the firſt *Wedneſday* in *Auguſt*, 1750, at *Kinghorn*, and ſo ſucceſſively on the firſt *Wedneſday* in *Auguſt* yearly, to examine the receipts, &c.

No diſtreſs, taken by authority of this act, ſhall any ways affect the king's duty of exciſe, &c. P. 357.

This act ſhall take place, and be in force from and after the firſt of *June*, 1749, for thirty-one years, and from thence to the end of the then next ſeſſion of parliament. P. 358.

This act ſhall be deemed a public act, &c.

N. B. *As this laſt act is, in many particulars, verbatim the ſame with the two preceding ones, I have abbreviated it wherever the ſenſe of it would admit; not to trouble the reader with many unneceſſary repetitions, eſpecially where there are too many unavoidable ones already.*

COLCHESTER *to* WIVENHOE.

By an act of 9 and 10 *Will.* and *Mary*, intitled, *An act for cleanſing and making navigable the channel from the* Hithe *at* Colcheſter *to* Wivenhoe, ſeveral duties were granted on goods and merchandizes, which ſhould be brought in and to the ſaid channel, and landed or ſhipped from *Wivenhoe*, or the *New Hithe* in *Colcheſter*, or between either of the ſaid places, for the term of twenty-one years, for the uſes and purpoſes mentioned in

in the ſaid act; and ſeveral powers were veſted in the mayor, aldermen, aſſiſtants, and common council of *Colcheſter* only, for appointing collectors, &c. to receive the duties; which act, and all the powers and authorities thereby given, and one moiety of the duties, except upon corn and grain, were by an act of 5 *Geo.* I. continued until the 1ſt of *May*, 1740; and further power was thereby given, to the mayor and commonalty only, for recovering the ſaid duties; and by one other act of 13 *Geo.* II. intitled, *An act for enlarging the term granted by an act paſſed the* 9 *and* 10 *Will.* III. for cleanſing and making navigable the channel from the *Hithe* at *Colcheſter* to *Wivenhoe*, and *for making the ſaid acts and another act of* 5 *Geo.* I. for enlarging the term, &c. *more effectual*; it is enacted, that the ſaid two former acts, together with the additional powers granted by the act of 13 *Geo.* II. ſhould be in force from the 1ſt of *May*, 1740, for ever; and that the duty on ſea-coal ſhould, after the ſaid 1ſt of *May*, be 3d. per chaldron, and no more, payable for the term of forty years; and by the ſaid act it was declared, that no other duty, except the arrears due under the former act, ſhould be raiſed upon any other goods or merchandizes whatſoever; and the ſaid mayor and commonalty of *Colcheſter* only were, by the laſt-mentioned act, veſted with further power for ſuing for the duties and the arrears under the former acts: And as a very large lock, which has been erected ſeveral years ſince in the channel, has been found of great uſe and ſervice to the navigation, and is now in a decaying condition, and much out of repair, and the channel in ſome parts is much choaked up, ſo that the navigation is greatly obſtructed, which has been occaſioned principally by there being great arrears of the duties, granted by the recited acts, for many years due, and ſtill unpaid; and alſo a large ſum of money remaining in the hands of the repreſentatives of the late receiver-general of the duties, which ought to have been recovered and applied for repairing the ſaid lock and cleanſing the channel; but as the power of the mayor and commonalty of *Colcheſter* had ceaſed for many years laſt paſt, in whoſe name only the ſaid duties were to be recovered, and diſcharges given, the ſaid duties and arrears cannot now be recovered and collected, for want of power to give diſcharges for the ſame; and there being no other fund to raiſe money for the purpoſes aforeſaid, the ſame cannot now be done without further proviſion be made for it, by authority of parliament; *It is therefore enacted*, that the ſeveral parcels of land ſevered, and lying between the preſent channel, and the place where the old channel was, and alſo the preſent channel, lock, and lock-houſe, and all the powers, matters, and things, which, by the three former acts before-mentioned, were veſted in the mayor, aldermen, &c. of *Colcheſter*, or the commiſſioners named for any of the purpoſes therein mentioned, and not hereby altered or varied, ſhall, from the 1ſt of *May*, 1750, be in force, and be veſted in the juſtices of the peace of the eaſt diviſion of the county of *Eſſex*, for the time being, the honourable *Richard Savage Naſſau*, *Charles Gray*, &c. who are hereby conſtituted commiſſioners for putting the ſaid ſeveral former acts, and this act, in execution, and the ſurvivors of them, &c. for the term of thirty years, and to the end of the then next ſeſſion of parliament, &c. 23 *Geo.* II. P. 379, 380, 381, 382.

From and after the 1ſt of *May*, 1750 an additional duty of 3d. a chaldron ſhall be paid on ſea coal, over and above the duty of 3d. payable thereon, by virtue of the act of 13 *Geo.* II. for the ſpace of thirty years, and no other duty, except the arrears due under the former acts, ſhall be raiſed on any goods or merchandizes whatſoever, and the commiſſioners are impowered to levy and recover the duty of the ſaid act of 13 *Geo.* II. and the additional duty hereby granted; together with the money remaining in the hands of the repreſentatives of the late receiver-general of the duties; and alſo all ſums of money due from any perſons on account of the ſaid duties, or penalties, forfeitures, &c. P. 383.

The commiſſioners, after paying the expences of this act, may diſpoſe of the monies towards the ſeveral uſes and purpoſes mentioned by the former act, in ſuch manner as they ſhall think proper. P. 384

The commiſſioners, at any of their meetings, may borrow money, at a legal or leſs intereſt, on the credit of the duties, and aſſign over the ſame, the charges thereof to be paid out of the duties, for any term during the continuance of the laſt mentioned and this act, as a ſecurity for re-payment thereof; and the ſaid money, after payment of ſuch of the expences of obtaining this act as the ſums before directed to be applied for

hat purpoſe ſhall be deficient, is to be applied for the ſeveral uſes and purpoſes mentioned in the preſent and former acts.

Six days notice, excluſive of the days of notice and meeting, under the hand of the clerk to the commiſſioners, is to be fixed on the outſide of the door of the *Moothall*, or on the market-place of the town of *Colcheſter*, of the meeting of the commiſſioners, to borrow money on credit of the duties.

All mortgages and aſſignments for re-payment of the monies, ſo to be borrowed, are to be entered at length in a book, to be kept for that purpoſe, by the clerk of the commiſſioners, which may be peruſed at ſeaſonable times, by any perſons whomſoever, on payment of 1s. only. 23 *Geo.* II. P. 385.

The commiſſioners at any of their meetings may place out at intereſt, in the names of three or more of them, any ſums which ſhall not be immediately neceſſary to be applied for the purpoſes before-mentioned, upon any real or parliamentary ſecurities, or the public funds; and may call in and apply the ſame, and the intereſt ariſing thereby, from time to time, in the ſupport and maintenance of the ſaid lock, and cleanſing the channel and other purpoſes aforeſaid.

The commiſſioners, at any of their meetings, are impowered to chuſe and appoint one or more collectors or receivers of the duties granted by the ſaid act of 13 *Geo.* II. and by this act, who are to give ſecurity to three or more commiſſioners, for the monies that ſhall be received by them, and for the faithful execution of their office: and they may alſo appoint a clerk, and ſuch other officers and ſervants, as ſhall be needful to be employed about the premiſes; and may remove them, and elect others in their place, in caſe of death, or ſuch removal; and may allow them reaſonable ſalaries out of the monies to be raiſed.

Thirteen commiſſioners, at the leaſt, two of which are to be juſtices of the peace of the eaſt diviſion of the county of *Eſſex*, are to be preſent at all meetings, for the purpoſe of putting this, or the former acts, in execution; and three days notice of every ſuch meeting, excluſive of the day of meeting, under the hand of the clerk, is to be fixed upon the outſide of the door of the *Moothall*, or on the market place of the town of *Colcheſter*. 15 *Geo.* II. P. 386.

Perſons accepting of any place of profit, or other truſt relative to the ſaid duties, or farming any key within the limits of this act, are made incapable of acting as commiſſioners.

The preſcriptive or other rights of the borough of *Colcheſter* are to continue and remain the ſame as if this act had not been made, in all things not interfering with the directions and due execution thereof.

All ſuits or actions, to be brought for any thing done under any of the former acts, ſhall be commenced within ſix months after the commencement of this act; and, if any action or ſuit ſhall be brought for any thing that ſhall be done in purſuance of any of the ſaid former acts, or this preſent act, it ſhall be commenced in ſix months after the fact committed, and ſhall be brought in the county of *Eſſex*; the defendants may plead the general iſſue, that the ſame was done by the authority of the ſaid former acts, or this act; and if it ſo appear, or if the ſuit be brought in any other county, the jury ſhall find for the defendants; or if the plaintiffs become nonſuit, or diſcontinue their action, or a verdict paſs againſt them, or on demurrer, judgment is given againſt them, the defendants ſhall have treble coſts, on the certificate of the judge before whom the cauſe was tried, and ſhall have the ſame remedy as defendants have for coſts in other caſes by law. P. 392.

This act ſhall be deemed a public act, and ſhall be judicially taken notice of as ſuch by all judges, &c. without ſpecially pleading the ſame.

WHITEHAVEN.

Whereas the town of *Whitehaven* in the county of *Cumberland*, is, of late years, greatly improved in trade and ſhipping, and is yet capable of further improvements therein, to the great advancement of her majeſty's revenue, the increaſe of ſhipping and navigation

gation, and the benefit of the ſaid inhabitants, and of the adjacent country, if the harbour of the ſaid town can be preſerved, and was enlarged and regulated in a proper manner: and whereas the application of the accuſtomed duties, beſides ſeveral very conſiderable ſums, are found inſufficient to defray the growing charges of maintaining the ſaid harbour, and of making ſuch new works as are ſtill neceſſary for ſecuring it; to the end therefore that ſuch courſe may be for ever eſtabliſhed as ſhall be effectual for the purpoſes aforeſaid.

It is enacted, That all that precinct, included within the limits and bounds hereinafter expreſſed, viz. beginning at the wharf, on the north-weſt ends of *Marlborough-ſtreet*, and from thence in a line north-eaſt and by north, till the middle of *Lowther-ſtreet*, open upon it, and from thence in a ſtraight line parallel to the *range* of the ſame ſtreet, directly to the low-water mark, from thence by the low water-mark to the rock whereon the new mole is begun to be erected, and ſo along the ſaid rocks, by the low-water mark, till it anſwer the line of the ſaid mole, from thence along that line till it comes up to the ſaid mole, and ſo along the ſaid mole, till it join upon the old pier at the platform, and from thence, including the ſaid platform, along the new wharf, till it meet with the wharf of the weſt ſtrand, near the houſe of *Mary Addiſon*, widow, from thence along the ſame wharf by the cuſtom-houſe key, in a ſtraight line to the weſt ſide of the timber-yard, and ſo along the wall of the ſaid yard, to the north-weſt corner thereof, and from thence by the north-weſt wall of the ſame yard to the wharf where it began, as the ſame has lately been ſet out and bounded, is, and ſhall be from henceforth for ever, the harbour of *Whitehaven* aforeſaid, and appropriated to the lying, anchoring, and mooring of all ſuch ſhips, veſſels, and boats, as ſhall have occaſion, at any time or times hereafter, to make uſe of the ſame, and to no other uſe or purpoſe whatſoever. 7 *Anne*. S. 1.

No houſes, encloſures, or buildings whatſoever, ſhall, at any time hereafter, be made nearer the ſaid harbour than is hereafter limited, viz. On the weſt ſtrand, nearer than the preſent houſes, &c. there; on the new wharf, between Mrs. *Addiſon's* houſe and the north-eaſt corner of *Henry Walker's* ground-plot, nearer than the range of the ſaid houſe and ground; and from thence to the iron oar ſteaths, nearer than forty-eight yards at *Henry Walker's* drawn to forty yards; at the ſaid ſteaths from thence to the north-eaſt corner of the ſaid ſteaths, nearer than the eaſt range of the ſame; and from thence to the anchor-ſmith's nearer than eighteen yards; and from thence to the platform, nearer than the range of *Hewſon's* ſmithy; and from the platform along the new mole, to the elbow of the ſaid mole, nearer than twelve yards; and from thence to the low-water mark, nearer than a line ſtretching to the north-weſt; and along the counter-mole intended to be made on the north-eaſt ſide of the harbour, nearer than the range of the north-eaſt ſide of *Lowther-ſtreet*; nor from thence to the timber-yard, nearer than fifteen yards; but that all the ſpace aforeſaid ſhall be left free and open for the erecting of poſts for the mooring of ſhips and veſſels, and for the other uſes of common wharfs or quays for the conveniency of the ſhipping in repairs or otherwiſe: and that nothing ſhall be taken or demanded, for or upon the account of wharfage, for the uſe of any of the ſaid wharfs or quays, nor for any cranage thereon, unleſs *James Lowther*, Eſq. or his heirs, &c. and eleven or more of the truſtees herein-after appointed, ſhall agree to erect or make any crane or cranes, or other engine, on the ſaid wharfs, or any of them, which they are hereby empowered to do, as they ſhall think convenient, for the better lading and unlading of any goods; in which caſe a reaſonable cranage, or recompence, ſhall be paid for the uſes of the ſaid harbour, by ſuch merchants or others as ſhall be willing to make uſe of the ſame, and not otherwiſe.

Provided, that the ſaid *James Lowther*, his heirs, &c. lords of the manor of *St. Bees* in the ſaid county of *Cumberland*, ſhall and may, from time to time, continue the watch-houſe, and the block-maker's ſhop, and ſtore-room at the end of the pier, and repair or rebuild the ſame, and receive the rents and profits thereof, to his and their own uſe. S. 3

A ſufficient way, open and free for carts and other carriages, ſhall be left along each of the ſaid wharfs, and along the ſaid pier, and through the wharf between *Henry Walker's* ground plot and iron oar ſteaths, from the ground of the ſaid *James Lowther* behind the ſame wharf, not leſs than three yards, next adjoining upon the ſaid ſteaths; any thing in this act contained to the contrary notwithſtanding. S. 4.

And as it is found neceſſary to complete and finiſh the new mole aforeſaid, and to make a counter mole and head on the north eaſt ſide of the ſaid harbour, to ſtrengthen and repair the pier with a new bulwark, and other works, and to cleanſe and deepen the ſaid harbour; *Be it further enacted*, that, in lieu of the aforeſaid accuſtomed duties of anchorage, which have been heretofore uſually paid, all which duties are hereby wholly and for ever taken away and diſcharged, there ſhall be paid, from and after the 25th of *March*, 1709, for the term of fourteen years then next enſuing, the ſeveral rates and duties herein-after mentioned, viz. One half-penny for every ton, computing 192 gallons, *Wincheſter* meaſure, to the ton, for all coals that ſhall be delivered to be put on board any ſhip or veſſel in the ſaid harbour for exportation; which duty on coals ſhall be paid by the maſter, or other perſon, who ſhall have the rule or command of ſuch ſhip or veſſel, after the ſaid coals are ſo ſhipped, and before ſuch ſhip or veſſel go out of the ſaid harbour, and ſhall be diſcounted with the owner or proprietor of the ſaid coals out of the price of the ſame; and the ſaid maſter, &c. is hereby impowered to diſcount and detain the ſaid duty accordingly. 7 *Ann.* S. 5.

There ſhall be paid for all goods and merchandize, which ſhall be imported and landed or diſcharged out of any ſhip or veſſel in the ſaid harbour, from and after the ſaid 25th of *March*, for and during all the term aforeſaid, the ſeveral rates and duties following, viz. For every hogſhead of tobacco 3d. For every hogſhead of ſugar 6d. For every ton of wine, brandy, or other exciſeable liquors, 2s. For every ton of hemp or flax 1s. 6d. For every hundred of deals 8d. For every laſt of pitch or tar 8d. For every ton of iron 12d. For every ton or raft of other timber 4d. For every barrel of herrings 1d. For every pack of linen, containing two hundred weight, computing 112 pounds to the hundred weight, 1s. And proportionably for every greater or leſs quantity of the ſaid goods and merchandizes reſpectively; and for all other goods and merchandizes ſo imported, 2d. in every 20s. of the value, as they ſhall be rated and charged at the cuſtom-houſe; all which ſums of money and duties upon importation ſhall be paid by the merchant, or other perſon into whoſe cuſtody or poſſeſſion, or by whoſe order, the ſaid goods and merchandize ſhall be delivered. S. 6.

From and after the ſaid 25th of *March*, for and during the term aforeſaid, every maſter, &c. commanding any ſhip or veſſel, ſhall pay for every ſuch ſhip or veſſel, upon her arrival at the ſaid port and harbour from any other port or place in the kingdoms of *Great-Britain* or *Ireland*, the ſum of 2d. per ton; and from any port or place of her laſt diſcharge in *Europe*, other than the kingdoms of *Great Britain* or *Ireland*, the ſum of 4d. per ton; and from any port or place of her laſt diſcharge in *Aſia*, *Africa*, or *America*, the ſum of 8d. per ton, according to the tonnage of each ſhip or veſſel ſo arriving there; the ſaid tonnage to be admeaſured as is deſcribed in an act the 5th and 6th of *Will.* and *Mar.* intituled, *An act for granting to their Majeſties ſeveral rates and duties upon tonnage of ſhips*, &c. S. 7.

Provided, that for every ſhip or veſſel, which, during the term aforeſaid, ſhall, by ſtreſs of weather, be drove into the ſaid harbour of *Whitehaven*, or ſhall otherwiſe come into the ſame for ſecurity or preſervation, the ſaid port or harbour not being the port of their diſcharge or lading, there ſhall be paid one fourth part of the aforeſaid duties of tonnage upon ſhipping, according to the ports or place from whence they ſhall arrive as aforeſaid reſpectively, and no more. S. 8.

From and after the expiration of the aforeſaid term of fourteen years, one third part of the rates and duties; herein before charged upon the tonnage of ſhips and veſſels, and no more, ſhall for ever continue, and be paid in manner aforeſaid, for the perpetual repairing, cleanſing, and maintaining of the ſaid harbour of *Whitehaven*. S. 9.

And, for the better collecting and diſpoſing of the ſeveral ſums of money, rates, and duties, hereby made payable, as well after the expiration of the ſaid term as during the continuance of it, and for the making and ordering of the works herein before enumerated, and for the perpetual good order and regulation of the harbour aforeſaid. *Be it enacted*, that the ſaid *James Lowther*, his heirs and aſſigns, lords of the manor of *St. Bees* aforeſaid, for the time being, or, in his or their abſence, any perſons deputed by them, under their hands and ſeals, and ſix other perſons to be likewiſe nominated, appointed, and changed, from time to time, by the ſaid *James Lowther*, his heirs and aſſigns aforeſaid, under their hands and ſeals, and *William Feryes*, *Clement Nicholſon*, *Thomas Lutwidge*, *Robert*

Robert Blacklock, *Eliſha Gale*, &c. merchants, until the firſt *Friday* in the month of *Auguſt*, 1716; and if, during that term, any of them happen to die or reſign, then ſuch perſon and perſons, as the greater part of the ſurvivors of them ſhall nominate and elect, during the reſidue of the ſaid term, and from thenceforth fourteen perſons to be choſen, nominated, and appointed, every three years, by ballot, by the majority of the inhabitants of the ſaid town of *Whitehaven*, at the time of ſuch election dealing, by way of merchandize, in the goods ſubjected to the payments and duties aforeſaid, or any of them; or being maſter, or having any part or ſhare, not leſs than one ſixteenth, of any ſhip or veſſel then actually belonging to the port of *Whitehaven*; the firſt election to be made on the firſt *Friday* in *Auguſt*, 1716, aforeſaid, at the court-houſe in the town of *Whitehaven*; and ſo, from time to time, on every firſt *Friday* of every month of *Auguſt*, in every third year after the ſaid firſt election ſucceſſively for ever, *ſhall be*, and are hereby conſtituted and appointed truſtees, for the ordering and directing the collection, receipt, and diſpoſal of the ſums of money and duties, which, from time to time, by virtue of this act, ſhall become due and payable, and for ordering and directing the building, and making the works in this act before enumerated, and for deepening, cleanſing, and regulating the ſaid harbour of *Whitehaven*, in ſuch manner as in this act is provided. 7 *Anne*, S. 10.

And to the end the ſaid duties and payments may be duly collected, levied, and paid, according to the true intent and meaning of this act, *It is further enacted*, that it ſhall be lawful for eleven or more of the ſaid truſtees, to chuſe and appoint ſuch collectors and receivers of the duties and monies payable by this act, and to diſplace them, and appoint others, as they ſhall think fit. S. 11.

Provided, that the ſaid truſtees take for ſuch collectors, &c. good and ſufficient ſecurity for the faithful diſcharge of their reſpective duties, &c. S. 12.

The ſaid collectors and receivers ſhall receive for their pains, in executing their offices, ſuch ſums as the truſtees ſhall think fit, not exceeding, for all together, 12d. in the pound; and the truſtees are hereby impowered to meet on the firſt *Friday* in the month of *June*, in every year, or oftner if they think fit, at the court-houſe in *Whitehaven*, to audit the ſaid collectors', &c. accounts, which, with all their proceedings relative to the truſts, ſhall be fairly entered into books provided for that purpoſe. S. 13.

All the ſums of money and duties, collected by virtue of this act, ſhall be applied and diſpoſed for the uſes of the ſaid harbour, and in ſuch manner as is in this act directed, and for no other uſe, intent, or purpoſe whatſoever, viz Eleven or more of the ſaid truſtees ſhall, and may, from time to time, direct and order the making of the aforeſaid works, and the deepening and cleanſing of the ſaid harbour, in ſuch manner as they ſhall think moſt neceſſary and conducive to the ends and purpoſes aforeſaid, according to the true intent and meaning of this act; and ſhall likewiſe order and direct the fixing and erecting of poſts for mooring, on the ſaid peer and wharfs as they ſhall think expedient, and the perpetual repairing of the ſaid pier, moles, wharfs, and mooring poſts, and the cleanſing and maintaining of the ſaid harbour; and ſhall order the removal of all annoyances to the ſaid harbour and wharfs, and may contract with workmen; but firſt repay the charges of paſſing this act, &c. S. 14.

Provided always, that no other walls, encloſures, or breaſt-works, but what are directed in this act, be made within the limits of the ſaid harbour, upon any pretence whatſoever, without the conſent and approbation of the ſaid *James Lowther*, his heirs, &c. and of ſeventeen, or more, of the reſt of the ſaid truſtees for the time being. S. 15.

And be it further enacted, that no ſhip ſhall unlade any ballaſt in the ſaid harbour in the night time, nor throw any thing into it, either of ſtone, rubbiſh, &c. There ſhall not be kept any fire, nor any lighted candle, except in a lanthorn, or in caſe of neceſſity, on board any ſhip or veſſel lying in the ſaid harbour, under different penalties, &c. That, if any ſhip or veſſel ſhall, through miſmanagement or careleſſneſs, run foul, or bilge upon the pier, moles, or new wharf belonging to the ſaid harbour, whereby the ſame ſhall be any ways damnified, the maſter or ruler of ſuch ſhip or veſſel ſhall, with all convenient ſpeed, upon notice, repair the damages ſo ſuſtained, at the charge of ſuch ſhip or veſſel, under the penalty of double the value thereof, for every ſuch neglect. That, for the natural ſecurities of the ſaid harbour, no perſon

ſhall

ſhall quarry, take or carry away any ſtones, either below the high-water mark, or from the *Baurgh*, &c. 7 *Anne*. S. 16.

Provided nevertheleſs, that the ſaid *James Lowther*, &c. and any ſeventeen or more, of the reſt of the truſtees, may, from time to time, as they ſhall ſee occaſion, explain, or alter all, or any, the aforeſaid orders, in this act particularly provided, or the penalties of the ſame; and alſo ſubſtitute or make any further or other orders and by-laws, for the better government and regulation of the ſaid harbour, and the wharfs aforeſaid, and under ſuch penalties, not exceeding 6s. 8d. for any one offence, as they ſhall judge requiſite for that purpoſe; and that they may alſo, by the like concurrence, make any other work or works, in or about the ſaid harbour, as well for the better preſerving, ſecuring, cleanſing, and deepening the ſame, as alſo for the more convenient docking, repairing, and cleanſing of ſhips or boats, or for any other uſes, improvement, or accommodation of the ſaid harbour, or of the ſhipping therein, as they ſhall find neceſſary or expedient; any thing in this act contained to the contrary thereof notwithſtanding. S. 17.

And for the more effectually preventing the throwing of aſhes, &c. into the harbour, fifteen or more, of the truſtees, with the conſent of the ſaid *James Lowther*, may appoint and agree with a ſcavenger, within the ſaid town for carrying away the dirt, &c. S. 18.

All penalties for any offence committed within the precincts of the ſaid harbour, after deducting the charges of proſecution, and allowance to informers, as the truſtees ſhall think fit, ſhall be applied to the uſes of the ſaid harbour, which penalties may be recovered by diſtreſs and ſale, &c. S. 19.

In caſe the collectors and maſters of ſhips cannot agree about the tonnage, it ſhall be lawful for the ſaid collectors, at all convenient and ſeaſonable times, to enter into ſuch ſhips, and to admeaſure the ſame, according to the directions of the act of parliament herein-before referred unto, which admeaſurement ſhall be the rule to charge ſuch ſhips, then, and at all times afterwards; and, in caſe any maſter, &c. do not, upon reaſonable demand, pay the aforeſaid duty upon coals, chargeable upon him by this act, and to be diſcounted upon the coal owner, as aforeſaid; and likewiſe, in caſe any ſuch maſter do not, upon like reaſonable demand, after the tonnage of the ſaid ſhip is agreed unto, pay the ſaid duty upon tonnage, it ſhall be lawful for the collectors to take any tackle, &c. belonging unto ſuch ſhip or veſſel, by way of diſtreſs, and to ſell the ſame, in caſe payment is delayed for three days, &c. S. 20.

And, in caſe the ſums, appointed by this act to be paid for any goods or merchandizes imported, ſhall not be paid by the merchant, or owner thereof, upon reaſonable demand made, the collectors may diſtrain all, or any part thereof, or any other goods belonging to the ſaid merchants or owners, which ſhall then or afterwards come to, or be found in, the precincts of the ſaid harbour; and, in caſe of non-payment in three days, may ſell the ſame, &c. S. 21.

The officers of the cuſtoms at the port of *Whitehaven*, ſhall permit the collectors of the duty hereby given, without fee, to reſort unto, inſpect, and take cognizance, of any entries which ſhall be made there, of any goods or merchandize chargeable by this act; and the ſaid officers of the cuſtoms ſhall not diſcharge any ſhip outwards or inwards, until the duties hereby granted for tonnage on ſhips and coals ſhall be paid, to be proved by the maſter's producing a certificate thereof under the collector's hand, &c. S. 22.

And, the better to cleanſe and deepen the ſaid harbour, it ſhall be lawful for eleven or more of the truſtees, to order the digging and removing any ſtones, &c. within the precincts of the ſaid harbour, &c. and likewiſe they ſhall have free liberty to dig, quarry, and take all ſuch ſtones, within the ſaid harbour as may be uſeful for walling or otherwiſe, and to uſe the ſame in the works of the ſaid harbour, and to ſell ſuch part of them as there ſhall be no occaſion for, and apply the money ariſing by ſuch ſales to the uſes of the ſaid harbour only; and if there be not ſtones ſufficient for the ſaid work, to be got within the precincts of the ſaid harbour, they ſhall have liberty to quarry and take ſo much more, as, together with the ſtones ariſing within the ſaid harbour, ſhall be neceſſary for the uſes and purpoſes of it, in any place or places upon the

the ſea ſhore, within the manor of *St. Bees*, beyond the aforeſaid line, drawn from the weſtern points of *Tomheard-Rocks* to the *Baurgh*. 7 *Ann.* S. 23.

Eleven or more of the truſtees ſhall, by writing under their hands, appoint a pier-maſter, to continue during their pleaſure, who ſhall have power to order the regular lying, anchoring, and mooring of ſhips and veſſels in the ſaid harbour, and to determine any difference that may happen in relation thereto, and to cauſe a due execution and obſervance of the rules in this act, appointed, &c. and the truſtees are hereby impowered to allow ſuch perſon a ſalary, not exceeding 20l. *per annum*, &c. S. 24.

And, for the better ſecurity of ſhips, which may have occaſion to put into the ſaid harbour in bad weather, all that part of *Whitehaven-Bay*, lying on the north-eaſt of the ſaid intended counter-mole, ſhall be always left with a free and open beach to the full ſea; and no walls, wharfs, or breaſt-works, ſhall, at any time, be made there, upon any pretence whatſoever, in any ſuch depth of water, as may endanger any ſhip or veſſel to ſtrike or run upon the ſame, without the conſent and approbation of ſeventeen of the truſtees for the time being. S. 25.

Provided nevertheleſs, that, as the land ſhall happen to gain on the ſea, on the north-eaſt ſide of the ſaid counter-mole, it ſhall be lawful for ſuch perſons as ſhall be owners of ſuch lands to advance any buildings or other works, at their will or pleaſure, ſo as not to endanger the ſtriking of any ſhip or veſſel thereon; any thing herein contained to the contrary thereof notwithſtanding. S. 26.

And as the temporary duties, granted by this act, cannot of a long time raiſe ſuch a ſum of money as may be ſufficient for the aforeſaid extraordinary works, which are to be done at the ſaid harbour; *It is therefore further enacted*, that eleven or more of the ſaid truſtees are hereby empowered by deed or deeds, indented under their hands and ſeals, to convey and aſſure all the ſaid duties hereby granted, or any part of them, for all, or any part of the ſaid term of fourteen years, as they ſhall judge requiſite, to any perſon or perſons, who ſhall be willing to lend or advance any ſum or ſums of money thereupon, at intereſt, not exceeding the rate of ſix pounds *per centum per annum*, which money, ſo lent or advanced, ſhall be employed for and towards the uſes of the ſaid harbour, according to the true intent and meaning of this act, &c. S. 27.

If any action, ſuit, &c. ſhall be commenced, &c. againſt any perſon, for any thing that he ſhall do in purſuance of this act, &c. he may plead the general iſſue, &c. And this act ſhall be taken, and allowed in all courts as a public act, &c. S. 28.

Continued by 10 Annæ *for* 14 *years.*

The preamble recites the acts 7 and 10 *Anne*, and ſhews their deficiency; and then this act continues the ſaid two recited acts for twenty-one years, to commence after the 10th day of *April*, 1740, except ſo far as either of them are by this act enlarged, altered, or otherwiſe explained. 13 *Geo.* II. P. 311, 312, 313, 314.

It is further *enacted*, that the truſtees appointed by the former, or this preſent act, have power to mortgage all or any part of the duties, ſubject to the forementioned debt of 9381. 17s. 7d. 3q. to any perſon who ſhall advance money thereon, to effect the neceſſary purpoſes of this act, and ſecure the repayment of the ſums ſo advanced, with intereſt for the ſame.

The money directed to be borrowed by this act ſhall be applied, in the firſt place to diſcharge the ſum of 9381. 17s. 7d. 3q. borrowed by authority of former acts, with the intereſt, and afterwards for making ſuch new works as may be neceſſary for improving the ſaid harbour, and keeping the ſame in good repair. P. 315.

After the ſaid ſums are paid off, and the harbour judged by the juſtices of the quarter-ſeſſions, to be in good repair, the temporary duties ſhall ceaſe, and a moiety only of the duties on tonnage of veſſels granted by the former acts, ſhall continue to keep the harbour in repair for ever.

This act ſhall be deemed a public act, &c.

The reſt of the preceding act is only relative to mending the roads, and ſetting up turnpikes in the neighbourhood of Whitehaven; *and conſequently, having no affinity with the maritime affairs we are now treating of, its inſertion here would be ſuperfluous and unneceſſary.*

GREENOCK

ſhall quarry, take or carry away any ſtones, either below the high-water mark, or from the *Baurgh*, &c. 7 *Anne*. S. 16.

Provided nevertheleſs, that the ſaid *James Lowther*, &c. and any ſeventeen or more, of the reſt of the truſtees, may, from time to time, as they ſhall ſee occaſion, explain, or alter all, or any, the aforeſaid orders, in this act particularly provided, or the penalties of the ſame; and alſo ſubſtitute or make any further or other orders and by-laws, for the better government and regulation of the ſaid harbour, and the wharfs aforeſaid, and under ſuch penalties, not exceeding 6s. 8d. for any one offence, as they ſhall judge requiſite for that purpoſe; and that they may alſo, by the like concurrence, make any other work or works, in or about the ſaid harbour, as well for the better preſerving, ſecuring, cleanſing, and deepening the ſame, as alſo for the more convenient docking, repairing, and cleanſing of ſhips or boats, or for any other uſes, improvement, or accommodation of the ſaid harbour, or of the ſhipping therein, as they ſhall find neceſſary or expedient; any thing in this act contained to the contrary thereof notwithſtanding. S. 17.

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Continued by 10 Annæ *for* 14 *years.*

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This act ſhall be deemed a public act, &c.

The reſt of the preceding act is only relative to mending the roads, and ſetting up turnpikes in the neighbourhood of Whitehaven; *and conſequently, having no affinity with the maritime affairs we are now treating of, its inſertion here would be ſuperfluous and unneceſſary.*

GREENOCK.

The town of *Greenock*, in the county of *Renfrew*, being advantageouſly ſituated on the river *Clyde*, for carrying on both foreign and coaſting trade, the ſuperior, with the inhabitants thereof about the year 1705, began to raiſe money by a voluntary ſubſcription, for building a harbour there, and ſome progreſs hath been made therein, which, if completed, would be of great advantage to the town, and to the trade and navigation of thoſe parts; but the produce of the ſubſcription has been found inſufficient to anſwer that purpoſe, and to defray the expence of cleanſing the harbour, and of performing other works which are abſolutely neceſſary to be done, to render the ſame uſeful and commodious: And, as the building of a new church, town-houſe, &c. are neceſſary and much wanted, but the inhabitants are not able to raiſe money to anſwer the expence thereof, nor to complete the harbour, and keep all the ſaid works in repair, without the aid of parliament; *It is enacted*, that from and after *June* 1, 1751, for the term of thirty-one years, and to the end of the then next ſeſſion of parliament, a duty of two pennies *Scots*, or one ſixth part of a penny ſterling, over and above the duty of exciſe payable to his majeſty, ſhall be laid upon every *Scots* pint of ale or beer, brewed, brought in, tapped, or ſold, within the town of *Greenock*, and baronies of *Eaſter* and *Weſter-Greenock*, and *Finnart*, or the liberties thereof; to be paid by the brewers for ſale, or venders thereof, to *John Alexander*, writer, and preſent bailiff, *Robart Donald*, *Robart Rae*, &c. merchants, who are appointed truſtees for cleanſing, and repairing the ſaid harbour and piers, and for building a new church, &c. and for putting in execution all other the powers of this act; and the money ſo to be raiſed ſhall be veſted in them, and be applied to the ſeveral uſes and purpoſes aforeſaid; the charges of obtaining this act being firſt deducted. 24 *Geo.* II. P. 943, 944, 945.

The remainder of this act is the ſame as the preceding ones of *Kirkcaldy*, *Anſtruther-Eaſter*, and *Kinghorn*, ſo excuſe to inſert it; and before I ſhut up this article of ports and havens, I ſhall remark, that every act concerning them, makes any ballaſt, ſtone, rubbiſh, or any thing elſe hurtful, thrown into them, *penal*, in conformity with the general act of 19 *Geo.* II. before recited at *pages* 141, 142 of this work.

LEITH HARBOUR.

By this act, power is given to the magiſtrates of *Edinburgh* to contribute 2000*l.* and likewiſe to receive contributions from other perſons, towards improving and enlarging this harbour, and erecting conveniencies for building, repairing, lading, unlading, and laying up of ſhips and veſſels, and for the building of warehouſes, wharfs, and keys; but, as no duty is laid on ſhipping by this act, we ſhall take no further notice of it. 27 *Geo.* II.

POOLE.

The mayor, bailiffs, burgeſſes, and collectors, &c. may demand payment of the ſeveral duties appointed by this act, in reſpect of goods, &c. imported into *Poole* harbour, and alſo of ballaſt duties and boomage, from the maſter of the veſſel wherein ſuch goods, &c. ſhall be imported, at the time he ſhall make his entry, with the officers of the cuſtoms, of the cargo of ſuch veſſel; and may alſo demand payment of the duties on goods, &c. exported from, reladen at, or taken out of any other veſſel in the ſaid port or harbour, in order to be exported, from the maſter at the time he ſhall clear out. 29 *Geo.* II. Sect. 5.

On non-payment of the duties, the mayor, or any juſtice of the peace, of the town of *Poole*, may, by warrant, diſtrain or ſtop ſuch veſſel till the duties are paid, with the coſts and charges of ſuch diſtreſs.

The

The maſter to deliver to the collector of the duties, in writing, an account of all goods on board, ſubject to theſe duties, on penalty of 10l. for every offence.

Salt and rice, for which the duty have been paid on importation, to be exempted.

The maſter to forfeit 40s. if he refuſes or neglects to ſtation his veſſel in ſuch place as the quay-maſter ſhall aſſign for taking in or throwing out ballaſt, for lading or unlading his veſſel.

All goods, landing on any quay or wharf, ſhall be removed in three days from the landing, or the owners forfeit 12d. per ton, for every ton of goods remaining after that time, and likewiſe 12d. per ton for every forty-eight hours they ſhall remain there. 29 *Geo.* II. Sect. 16.

No perſon to empty any ballaſt, &c. into the harbour, on pain of being deemed a public nuiſance, and their being puniſhed accordingly. Sect. 17.

Twenty hundred weight of ſcale goods, or two hundred and fifty-two gallons of liquids, or forty ſquare feet of meaſurable goods, to be deemed a ton. If any diſpute ariſes as to tonnage, to be determined by the mayor and two juſtices, and four younger brothers of the *Trinity-Houſe*, or the majority of them. Sect. 18.

The Table or Schedule of Harbour-Duties, Quayage, or Wharfage, Boomage and Ballaſt-Duties, chargeable on the Goods, and to be paid by the Maſter.

For every ton of goods, imported or exported, ſhipped or unſhipped, laden or unladen, in, on, or out of, any ſhip or veſſel, within the limits of the harbour of *Poole*, the ſum of 3d. per ton.

Provided it ſhall be lawful to import or export, &c. any goods into or from the channel, lading to *Wareham*, to the weſtward of the ſouth-weſt buoy, off the bulwarks of *Hamkey*, and near the entrance of the little channel, leading to *Poole*, free of the ſaid duty: Neither ſhall any duty be paid by open boats, lighters, or barges without decks, for bringing goods from *Wareham*, or any part of the channel to the weſt of the ſouth-weſt buoy, or any part of the iſle of *Purbeck*, within *North-Haven Point* to *Poole*, or from *Poole* to *Wareham*, or any part of the channel to the weſt of the ſaid ſouth-weſt buoy, or any part of the iſle of *Purbeck*, within *North-Haven Point* aforeſaid; but if the goods ſhall be imported in decked veſſels into or out of the little channel within *Poole* ſtakes, then the duties to be paid.

For boomage the following duties ſhall he paid, except for veſſels employed in fiſhing or dredging.

Every decked veſſel of 10 tons burthen, or under, ſhall pay 6d.
Ditto 20 tons, or above 10, 1s.
Ditto 30 tons, or above 20, 2s.
Ditto 40 tons, or above 30, 3s.
Ditto 50 tons, or above 40, 4s.
Ditto 60 tons, or above 50, 5s.
Ditto 100 tons, or above 60, 6s.
Ditto above 100 tons 7s.

For ballaſt the following duties ſhall be paid: For every ton of ballaſt, ſhipped or unſhipped within *Poole* Stakes, 6d. But it ſhall be lawful to ſhip or unſhip ballaſt in the channel leading to *Wareham*, to the weſtward of the ſouth-weſt buoy, or any part of the iſle of *Purbeck*, within the *North-Haven Point*, duty free. And no more than 6d. per ton ſhall be paid for unſhipping and ſhipping ballaſt within *Poole* Stakes to careen.

Tobacco-pipe clay to be exempted from all duties.

MILFORD-HAVEN.

In this ſeſſion of parliament 10,000l. were granted towards carrying on works for forming and ſecuring the harbour of *Milford-Haven*, on account of its convenient ſituation for fitting out fleets, and ſtationing cruizers; but as no duties were laid on ſhipping for perfecting this uſeful work, I ſhall omit mentioning any thing further in relation to it. 31 *Geo.* I.

HAVING thus given a ſummary of the laws in being relative to the ports and harbours of *Great-Britain*, with which all maſters of ſhips, owners, and merchants ſhall be well acquainted; the firſt, that they may duly conform thereto, and the two latter, that they may form a juſt eſtimate of all the expences to be incurred by their ſhips and merchandiſe in our home ports; it will be neceſſary to add ſome directions for the better obſervance of the laws and regulations of foreign ports, *Britiſh* maſters of ſhips being often very negligent, or wilfully obſtinate upon this ſubject, ſo that in general they pay more forfeitures or penalties in foreign ports than thoſe of any other nation, and occaſion more trouble to their conſuls, who are often obliged to interpoſe their good offices to ſave them from corporal puniſhment. Indeed, it is a lamentable truth, that they acquire ſuch a contempt of legal authority from the licentiouſneſs of the times at home, that they ſubmit to it with great reluctance abroad, and ſometimes prove refractory even to their natural protectors. In all foreign ports implicit obedience, it is expected, ſhould be paid to the harbour or quay maſter, his deputy, and other aſſiſtants. A prudent captain will therefore take care to moor his ſhip in the part of the harbour or baſon aſſigned him by the ſaid officers. And his next care ſhould be to obtain from the factor or merchant to whom he is conſigned, a copy, whether printed or written, of the regulations eſtabliſhed by the magiſtrates of the places for the maſters of all ſhips and veſſels entering their harbour. I am particular upon this head, becauſe in many foreign ſea ports, the harbour dues are farmed out to low people, at a rack rent, who intending to make the moſt of their bargains, carefully conceal the ſaid regulations from ſtrangers, wiſhing that they ſhould violate rather than obſerve them, that they may be enabled to levy fines, and penalties. Sometimes alſo, the office of baillie, which anſwers to our ſheriff, is purchaſed from the prime miniſter or prince of the country, by men of mean rank and avaricious principles, and the power of convicting offenders being veſted in them, like Engliſh trading juſtices of the peace, they live by fees for commitments and diſcharges. This happened to be the caſe while the editor was Britiſh vice conſul at Oſtend; and it was not until he had preſented a ſtrong memorial to the court of Bruſſels, that an order was ſent to the magiſtrates of Oſtend to print their port regulations, and to diſtribute a ſufficient number of them to the *Britiſh* and *Daniſh* conſuls, the only two then reſident, and alſo to all maſters of ſhips requiring copies. A. D. 1781.

The Emperor having juſt made Oſtend a free port, by which wiſe commercial revolution, the oppreſſions under which the trade and navigation of the *Auſtrian Netherlands* laboured are moſtly removed, and the port greatly reſorted to by veſſels of all nations, eſpecially *Britiſh*, in the time of war with *France*, *Spain* and *Holland*, we cannot do a more acceptable ſervice than to inſert a copy of the above mentioned regulations, which were drawn up by an eminent Flemiſh civilian, and founded upon thoſe of other maritime countries.

Directions for Maſters of Ships and Veſſels in the Port and Key of OSTEND.

I.

IT IS FORBID to all maſters, pilots, ſailors, fiſhermen, bilandermen, and others to make fire on board their ſhips or veſſels in the key or baſon, on any pretext whatever, under a fine of ten guilders.

II.

To make faſt either to the piles or poſts of the harbour, or to thoſe ſerving to uphold or preſerve the key or baſon, under the ſame penalty as above.

III.

To throw any filth or dirt whatſoever, into the baſon under the ſame fine.

IV.

To come into the key or baſon and there to take place without the knowledge and conſent of the key-maſter, under the ſame penalty.

V. To

V.

To place their ſhips or veſſels on the floor, being of oak, of the ſluice at the end of the key, *idem.*

VI.

To change birth, or hawl their ſhips or veſſels, either in the harbour or in the key, without the key-maſter's leave, *idem.*

VII.

To incumber or ſtop up the entrance of the key or baſon with their ſhips, veſſels, and bilanders, under three guilders fine.

VIII.

To land on the key anchors, guns, carriages, maſts, &c. and other ſuch articles, without the key-maſter's knowledge, under a penalty of three guilders for each piece.

IX.

To abuſe by word or deed the key-maſter when he is performing his duty, under a fine of twelve guilders, beſides arbitrary correction, often impriſonment.

X.

It is likewiſe ORDERED that all maſters, pilots, ſailors, fiſhermen, bilandermen, and others, do put a ſail betwixt the ſhips and the bilander, when they want to be ballaſted in the key or baſon, under ten guilders fine.

XI.

To hawl their ſhips or veſſels out of the baſon on the very firſt order of the key-maſter, *idem.*

XII.

To land their gun-powder, and get it tranſported to the burgher's magazine immediately after the veſſel is made faſt in the key or baſon, under fifty guilders fine.

XIII.

To obey inſtantly and without reply to the key-maſter's command, either to go out of the baſon, or to hawl their ſhips or veſſels a-head or a-ſtern, or any other thing whatſoever, under ſix guilders fine; and further, to indemnify the maſters of any ſhips that might ſuffer delay by his refuſal, whereon credit ſhall be given to the key-maſter.

XIV.

On ſuch or the like occaſions the key-maſter is authorized to take people, at the expence of the captains refuſing, to hawl away and change their births, to cut their hawſers, and act as he will judge proper, without being reſponſible for any damages.

XV.

Every captain is obliged to hoiſt his colours on *Sundays* and holy-days, ſaints' days innumerable, under three guilders fine: He muſt alſo hoiſt his colours at any time the key-maſter adverti ſes him ſo to do.

XVI.

Finally, every ſhip or veſſel arriving in the harbour laden, or in her ballaſt, pays three ſtivers (pence) per laſt for lights, and one ſtiver key dues; being together four ſtivers per laſt.

Beſides a due attention to the regulation of ports, maſters of trading veſſels ſhould be careful not to give offence to the military governors, or the officers on guard, in garriſons. To avoid it, they ſhould inquire what military orders are given out with reſpect to the harbour, and oblige their crews to obſerve them. As they vary in different places, it is impoſſible to enumerate them; but one inſtance may ſerve to explain this hint. Firing a muſquet, or even a pocket-piſtol, on board a ſhip or on ſhore, without leave obtained from the commanding officer, or giving previous notice of the intention in firing it, is an offence liable to puniſhment by impriſonment. In the month of *November*, 1765, a boy on board an *Engliſh* collier fired at a bird flying a-croſs the baſon; the officer on the quay-guard was alarmed, ſent a file of ſoldiers on board, and demanded the boy: The maſter concealed him, and, refuſing to deliver him up, was himſelf carried on ſhore, and kept in cuſtody till the matter was compromiſed by the interceſſion of the *Britiſh* vice-conſul. But it may ſo happen, that no ſuch protector is on the ſpot, in which caſe great inconveniences may ariſe from ignorance of the eſtabliſhed cuſtoms in ſea-ports which are garriſon towns.

Heavy

Heavy forfeitures and penalties are likewiſe often incurred by purchaſing ſpirituous liquors and wines, in retail quantities, at improper places, and of improper perſons. At Oſtend, and in other foreign ports, publicans are only allowed to ſell liquors to their gueſts in their own houſes; and if a ſailor carries a bottle of ale, ſpirits, or wine from an inn or ale-houſe, he may be fined or impriſoned for defrauding the *Cantein*, an officer appointed by the magiſtrates for the ſale of ſuch liquors, in any quantity under a gallon, annually farmed out to the higheſt bidder.

In a word, no care or circumſpection can be too great on the part of maſters of trading ſhips, to keep themſelves and their crews free from all moleſtation in the ports to which their cargoes are conſigned.

Of Light-Houſes.

LIGHT-HOUSE] A LIGHT-HOUSE is a marine term for a tower, commonly advantageouſly ſituated on an eminence near the ſea-coaſt, or at the entrance of ſome port or river, for the guidance of ſhips in dark nights, by the illumination of a fire or candles burnt on the top of them. The firſt we read of was called *Pharos*, from the *Greek* word *Phos*, in Latin *Lumen*, *Light*, and *Orao*, Latin *Videre*, *to ſee*; and this was ſo ſuperb a fabrick, as to be reckoned one of the ſeven wonders of the world, and to give a general name to all ſucceſſive ones. It was built by *Ptolemy Philadelphus*, on a ſmall iſland at the mouth of the *Nile*, near *Alexandria* in *Egypt*, and is ſaid to have coſt that king 800 talents. It is recorded to have been built ſquare, upon four pillars of glaſs reſembling crabs, 300 cubits high, on which a fire was nightly burnt to warn approaching pilots of thoſe dangerous coaſts, and by this means direct them to ſhun the riſks they were expoſed to: But though this was ſo juſtly celebrated both for its uſe and magnificence, it was equalled, if not exceeded, in fame by the renowned *Coloſſus* of *Rhodes*, which ſerved for the ſame purpoſe. This inanimate monſter was a brazen ſtatue of *Apollo*, ſet up at the entrance of that iſland's harbour, with its feet reſting on the two ſhores; it was about forty two yards high, and its ſtride ſo great that the largeſt ſhips ſailed into the port between its legs: This gigantic figure was dedicated to the ſun, and its prodigious ſize may be aſcertained by the dimenſions of its little finger, which it is ſaid few men were able to embrace. It was the work of *Chares*, a diſciple of the celebrated ſculptor *Lyſippe*, who was twelve years in perfecting it, and it is reported to have coſt about 44,000l. ſterling; though I ſhould imagine this to be very far ſhort of its value, as, when broken to pieces, it loaded 900 camels. It remained erect for the ſpace of 1360 years, and was then thrown down by an earthquake, in which proſtration it continued for a long time, till the *Saracens* became maſters of the iſle, and ſold it to a *Jew*, who quickly deſtroyed this maſter-piece of art, to accommodate his removing it by the means of the afore-mentioned animals.

The tower of *Cordon* on the river *Bourdeaux*, the *Pharo* of *Meſſina*, the lanthorns at *Genoa*, *Barcelona*, &c. are reſpectively ſerviceable to the ſhips uſing thoſe parts; as our's on *Scilly*, the *Eddyſtone*, *Caſkets*, *Portland*, *Dungeneſs Forelands*, *Skerries*, &c. beſides the floating light at the *Nore*, are to navigation, in a more extenſive manner.

That on the *Eddyſtone* was begun by its ingenious projector, Mr. *Henry Winſtanley* of *Littlebury* in the county of *Eſſex*, gent. in the year 1696, and, after great labour and expence, was finiſhed in ſomething more than four years, though a much leſs ſpace of time would have ſufficed, had not the many difficulties of ſtormy weather, hardneſs of the rock, tides, and other impediments he had to ſtruggle with, protracted the work, and

and rendered the firſt lodgement, or foundation of the building, very hazardous and troubleſome; however, a perſon of Mr. *Winſtanley's* enterprizing genius was not to be intimidated by the impediments that preſented to obſtruct the proſecution of his intended fabrick; but he watched every ſpurt of fair weather, and ebb of the ſea, as well to commence as to carry it on, and happily ran through his toils by concluding it in the aforeſaid time, though the light was put up on the 24th of *November*, 1698, and it thenceforward was inhabited: It ſtood till the 27th of *November*, 1703; when Mr. *Winſtanley*, unfortunately being in it, found he had been building his tomb, as that dreadful ſtorm laid the rock once more bare, and buried both him and his works in the ſea; a plain proof of the deficiency of human contrivance, and of the inſecurity of the beſt projected fabricks, when providence interferes. Its re-building was begun in *July*, 1706, by *John Rudyerd*, gent. a light put up therein, and made uſeful, *July* 28, 1708, and finiſhed completely in 1709; ſince which it hath withſtood the tempeſts it is expoſed to, firm and ſecure.

This light-houſe bears from *Plymouth*, or the entrance of the Sound, S. and by W. and from *Ram-head* S. and half a point eaſtwardly, and is diſtant from the anchoring in the aforeſaid Sound four leagues, and from *Ram-Point* about three leagues and a half, this being the neareſt ſhore to the ſaid houſe; and the iſle of *Mayſtone* bears from the light-houſe about N. E. and is alſo four leagues diſtant ſouth. All ſhips, coming from the eaſt or weſt to *Plymouth*, have much the ſame advantage of the light: All the rocks near this houſe are on the eaſtwardly ſide, and ſtretching north, but moſt ſoutherly, and all are covered at high-water; but on the weſt ſide any ſhip may ſail cloſe by the houſe, there being twelve or thirteen fathoms water, and no hidden rock; though towards the E. and by N. about a quarter of a mile diſtant from the houſe, there lies one that never appears but at low ſpring tides, and is the more dangerous as it is little known.

The ſea ebbs and flows at this rock on ſpring tides 19 feet, and then at high-water all the rocks are covered, though a ſmooth ſea; and it is high-water at the ſame time as at *Plymouth*; but it runs tide and half tide; ſo that it runs eaſt three hours after it is high-water, and yet the ſea falls lower; and it runs weſt three hours after it is low-water, and yet the ſea riſeth.

At low tides, eſpecially ſpring tides, three great ranges of rocks appear very high, and lie almoſt parallel, ſtretching towards the S. E. and N. W. the houſe ſtanding the weſternmoſt of all. The afore-mentioned hidden rock is a full cable's length from all theſe others, and lies as aforeſaid.

There is always a family living in it, to tend its light; and the following acts have been made for its management and ſupport, viz.

From the time of placing a light uſeful for ſhipping in *Eddyſtone* light-houſe, there ſhall be paid to the maſter, wardens, and aſſiſtants of *Trinity Houſe* of *Deptford Strond*, by the maſters and owners of all *Engliſh* ſhips and barks which ſhall paſs by the ſaid light-houſe, except coaſters, 1d. per ton outward-bound, and 1d. per ton inward-bound, viz. of the merchants one moiety, and of the owner the other moiety; and of all ſuch aliens' ſhips as ſhall paſs by the ſaid light-houſe, 2d. for every ton of the burthen of the ſhip; and every coaſter paſſing by the ſaid light-houſe ſhall pay 2s. for each time: The ſaid duties to be collected by ſuch perſons as the ſaid maſter, &c. ſhall appoint, in ſuch port whence ſuch ſhip ſhall ſet forth, or where ſuch ſhip ſhall arrive, before they lade or unlade; the ſaid duties to be recovered by action of debt, &c. 4 and 5 *Ann.* C. 20.

The duties in the act 4 and 5 *Ann.* Cap. 20. directed to be paid by any ſhip paſſing by *Eddyſtone* light-houſe, ſhall be paid for every ſuch ſhip, as well thoſe belonging to her majeſty's ſubjects as ſtrangers, which ſhall paſs by the ſaid light-houſe, from or to any port, and ſhall be received of the maſter of ſuch ſhip in any part of *Great-Britain* or *Ireland*, and may be recovered in any of her majeſty's courts of law. 8 *Ann.* C. 17. S. 1.

No cuſtom-houſe officer ſhall make out any cocket, or other diſcharge, or take any report outwards, for any ſhip, until the duties granted by the ſaid act, and payable by the maſter of ſuch ſhip, ſhall be paid; and that ſuch maſter produces a light-bill, teſtifying the receipt thereof.

It ſhall be lawful for every perſon authorized by the *Trinity Houſe* to go on board any foreign ſhip to receive the duties, and, for non-payment, to diſtrain any tackle belonging

to

to ſuch ſhip; and, in caſe of any delay in payment, for three days after diſtreſs, it ſhall be lawful for the receivers of the ſaid duties to cauſe the ſame to be appraiſed by two perſons, and to ſell the ſaid diſtreſs.

This act and alſo the ſaid former act ſhall be public acts. 8 *Ann.* C. 17. S. 4.

The following act is concerning the light-houſe built on the iſland or rock called *Skerries*, lying in the ſea near *Holyhead*, in confirmation of letters patent granted to *William Trench*, Eſq. for building it, and recovers the ſame duties as the preceding one, though all the others receive but half.

All the powers and duties granted in letters patent, bearing date at *Weſtminſter* the 13th of *July*, 13 *Anne*, to *William Trench*, Eſq. deceaſed, for erecting a light-houſe on the iſland or rock called *Skerries*, near *Holyhead* in the county of *Angleſea*, ſhall have continuance for ever, ſubject to a proviſo, as to the maintaining of the light-houſe in the letters patent contained, and to the truſt in the act mentioned, and ſhall be veſted in *Sutton Morgan*, clerk, who married the only ſurviving child of the ſaid *William Trench*. 3 *Geo.* II. Cap. 36. S. 1.

The ſaid *Sutton Morgan*, his heirs and aſſigns, may demand of maſters and owners of every ſhip or bottom paſſing, croſſing, or ſailing in or through *St. George's* channel, by *Holyhead* or *Wicklow*, to or from any foreign port, or which ſhall paſs or croſs the ſaid channel to or from any place in *Great Britain* ſouthward of *Holyhead*, from or to *Wicklow*, or any place northward thereof in *Ireland* or that ſhall paſs, croſs, or ſail from any place northward of *Holyhead*, and ſail between *Holyhead* and the *Calf of Man*, or any way in *St. George's* channel to the ſouthward of *Dublin*; and likewiſe from all coaſters paſſing to or from any place in *Great Britain*, north of *Holyhead*, from or to any port, &c. ſouth thereof, 1d. per ton coming into, and the like ſum going out of, the ſaid ports in *Great Britain* or *Ireland*, and double ſuch duties for any foreign ſhip. S. 2.

Ships laden with coals in *Great Britain*, north of *Liverpool*, for *Ireland*, or the greateſt part of their lading being coals, and paſſing from *Great Britain* to *Ireland*, ſhall only pay one voyage in every year; the ſame to be paid the firſt voyage yearly, before clearing out of the cuſtom-houſes, either in *Great Britain* or *Ireland*. S. 3.

In conſideration of the benefit the pacquet-boats, ſailing betwixt *Holyhead* and *Dublin* received by the ſaid light-houſe, the poſt-maſter general ſhall pay to the ſaid *Sutton Morgan* the annual ſum of 50l. without fee, quarterly. S. 4.

If any perſon, having the command of any ſhip, ſhall refuſe to pay the duties, it ſhall be lawful for the ſaid *Sutton Morgan*, his heirs, &c. to ſeize any goods of any maſter or owner of ſuch ſhip, and to keep the ſame till the duties are paid; and, in caſe of delay in payment three days after ſuch ſeizing, he may cauſe the ſame to be appraiſed by two ſworn appraiſers, and afterwards ſell the goods. S. 5.

Nothing herein ſhall charge any of his majeſty's ſhips of war. S. 6.

The ſaid *Sutton Morgan* ſhall be freed from the payment of 5l. *per annum* quit rent, reſerved by the letters patent. S. 7.

This act ſhall be a public act. S. 12.

LITTLE CUMRAY LIGHT-HOUSE.

By this act the truſtees are impowered to erect a light-houſe on this iſland, at the mouth of the river *Clyde*, and to fix ſuch beacons, buoys, land or ſea marks, on any place in the Firth, as they ſhall think neceſſary for rendering the navigation more ſafe and convenient. 29 *Geo.* II.

The maſter or owner of every veſſel, bound outwardly on any foreign voyage, paſſing the light-houſe, to pay 1d. ſterling per ton, and 1d. per ton paſſing inwards from any foreign voyage to the northward, whether they paſs by the middle paſſage between the iſlands of *Little Cumray* and *Bute*, or by the eaſt ſide of *Little Cumray*, or between the iſlands of *Bute* and *Arran*, and whether they diſcharge in the *Clyde* or not; Every foreign veſſel to pay 2d. per ton, inwards and outwards; every veſſel of 30 tons or upwards, trading

to

to or from any part of *Great-Britain* or *Ireland* only, to pay 2q. per ton every time they paſs; and for every veſſel of fifteen tons, under the ſame reſtriction, 2d. per ton *per annum*; the year to commence from *June* 24, and the payment for the current year to be made before clearing the port.

On refuſal to pay the duties, the truſtees have power to diſtrain any part of the tackle of the ſhip, and ſell the ſame, returning the overplus.

There are alſo ſome light-houſes erected for the ſervice of private ports, as at *Ilford-Combe*, on *St. Bee's* head near *Whitehaven*. And large lanthorns are ordered by the ſtatute, to be ſet up on poles at the heads of ſome quays, ſuch as at the harbour of *Minehead*, on the river *Severn*, &c. and duties are aſſigned for maintaining them. See 10 *Anne*, Cap. 24.

SEA MARKS.] The maſters, wardens, and aſſiſtants of the *Trinity Houſe* at *Deptford Strond*, may at their coſts ſet up beacons, and marks for the ſea, in ſuch places near the coaſts, or *Forelands*, as to them ſhall ſeem meet. 8 *Eliz.* C. 13. S. 2, 3.

No ſteeple, trees, or other things ſtanding as ſea marks, whereof to the owner or occupier of the place, where the ſame doth ſtand, before the 1ſt of *March* next, notice ſhall be given by the queen's letters under her ſignet, ſhall, at any time hereafter, be taken or cut down, upon pain that every perſon, by whoſe conſent ſuch offence ſhall be committed, ſhall forfeit 100l. &c. and if the perſons offending be not of the value, they ſhall be deemed convict of outlawry.

And no man may erect a light-houſe, beacon, &c. without lawful warrant and authority. 3 Inſt. 204.

N. B. The above-mentioned *Trinity Houſe* is a kind of college at *Deptford*, belonging at firſt to a company or corporation of ſeamen only, with authority, by the king's charter, to take knowledge of thoſe that deſtroy ſea marks, &c. but now many gentry, and ſome nobility, are made members or elder brothers of that community.

Of Letters of Marque and Repriſal.

LETTERS of MARQUE or *Mart* are extraordinary commiſſions granted by the lords of the admiralty, or by the vice admirals of any diſtant province, to the commanders of merchant ſhips for repriſals, in order to make reparation for thoſe damages they have ſuſtained, or the goods they have been deſpoiled of by ſtrangers at ſea. Or to cruiſe againſt and make prize of an enemy's ſhips or veſſels, either at ſea or in their harbours.

We may therefore diſtinguiſh two ſpecies of letters of marque, thoſe which are ſpecial for the reparation of injuries ſuſtained by individuals at ſea, after all attempts to procure legal redreſs have failed; and thoſe which are general, being iſſued by the government of one ſtate againſt all the ſubjects of another, upon an open rupture between them.

They ſeem to me always to be joined to thoſe of repriſe, for the reparation of a private injury; but, when the hurt of an enemy is ſolely intended under a declared war, the former only are granted to privateers, as will be ſhewn in the ſubſequent chapter.

Theſe commiſſions in the law have other appellations beſides repriſals or letters of marque, as *Pignoratio*, *Clarigatio*, and *Androlepſia*, and though by virtue of theſe any capture they licence becomes legal, yet private authority will not juſtify the proceedings, as

as it only can be done by the power of that prince or ſtate, whoſe ſubject the injured perſon is, nor is the ſame grantable even by them, but where the ſuffering perſon has juſtice denied him, or illegally delayed. *Grot.* de Jure Belli & Pacis, L. 3. C. 2. S. 4, 5.

This cuſtom of repriſals is now become a law by the conſent of nations, and has been generally confirmed by an article in almoſt every treaty of peace that has for a century paſt been made in *Europe*, under its proper reſtrictions and limitations; as in that concluded with *Spain* the 13th of *May*, 1667, (Art. 3.) that with *France* the 21ſt of *July*, 1667, (Art. 16.) that with *Holland* of the ſame date, (Art. 31.) that with *Denmark* the 11th of *July*, 1670, and almoſt all others made ſince; and it was conſtituted by them, grounded, according to the great *Juſtinian*, on the urgency of human neceſſities, as without this great licence would be given and tolerated for the committing of depredations and injuries, eſpecially if only the goods of rulers were made liable, who ſeldom poſſeſs any thing that the injured can come at for ſatisfaction; whereas the effects of thoſe private men, whoſe dealings in trade are various, may be ſeiſed for recompence, ſometimes with the greateſt eaſe, and freeſt from riſk or danger. *Molloy* de Jure Mar. P. 27. S. 3. Juſt. Inſt de Jure Nat.

And as the benefit of this obligation was common to all nations, they, which were at one time ſufferers, would at another time be eaſed by it, and princes are not only accountable for public injuries, but in prudence ſhould endeavour to prevent private ones, and, by ſetting the good example of protecting foreigners from wrongs, add ſtrength to their juſt demands of redreſs, whenever their own ſubjects have occaſion to requeſt it from them.

If therefore the injured party cannot obtain his definitive *ſentence* or *judgement*, within a fit time, againſt the perſon of whom he complains, or if there be a judgement given againſt *apparent right* and law, and no relief can be had from the iniquity of ſuch a decree, the bodies and moveables of the prince's ſubjects, who render not right, may be apprehended and taken. *Molloy* de Jure Mar. P. 28. S. 5.

But in the proſecution of this there muſt be,

1. The oath of the party injured, or other ſufficient proof, touching the pretended injury, and of the certain loſs and damage thereby ſuſtained.
2. A proof of the due proſecution for the obtaining ſatisfaction in a legal way.
3. Of the delay or denial of juſtice.
4. A complaint to his own prince or ſtate.
5. Requiſition of juſtice, by him, or them, made to the ſupreme head or ſtate, where juſtice in the ordinary courſe was denied.
6. Perſiſtence ſtill in the denial of juſtice.

And all this preceding *letters of repriſal*, under ſuch cautions, reſtrictions, and limitations, as are conſonant to the law of nations, and ſubſiſting treaties, and as the ſpecial caſe ſhall require, may iſſue not only by the *Jus Gentium* and *Civile*, but by the ancient and municipal laws of the kingdom. *Mag. Char.* C. 30. the latter clauſe.

The repriſals grantable by the laws of *England* are of two ſorts, *ordinary* and *extraordinary*; the *ordinary* are either within or without the realm, and are always granted to *Engliſh* merchants, who have ſuffered in their perſons or effects, and have had their goods ſpoiled, or taken from them, beyond the ſea, by merchants-ſtrangers, and cannot upon ſuit, or the king's demanding juſtice for him, obtain redreſs; in ſuch caſe the injured perſon proving that he has proſecuted the offenders in a legal courſe, and had juſtice delayed, or denied him, he ſhall have a writ out of *Chancery* to arreſt the merchants-ſtrangers of that nation, or their goods here in *England*, the which is granted to the ſubject oppreſſed, not as a matter of favour, but of common right, by the *lord chancellor* or *keeper of England*, who always in ſuch caſe hath the approbation of the king or council, or both, for his ſo doing. P. 29. S. 7.

The other *ordinary* repriſals, granted for reparation out of the realm, are always under the great ſeal of *England*, and cannot be revoked or annulled; and the reaſon is, becauſe the perſon injured hath petitioned, and hath according to law made out by proof his loſs, and no regard having been paid to letters of requeſt ſent to the prince of the offender, nor reparation made; then the letters patent of repriſal, being ſealed, immediately create and veſt a national debt in the *grantee*, to be ſatisfied in ſuch manner, and by ſuch means, as the ſaid letters patent do direct, out of the goods and eſtates of his ſubjects, who re-

fuſes or protelates doing right; but, though theſe letters patents are unrevocable, yet if the ſupreme power thinks the execution of them cannot well be effected without endangering the peace of both ſtates, this may juſtly cauſe their reſpite till a more proper occaſion; for the ſtatute of 4 *Henry* V. c. 7. does not reſtrain the king's prerogative and authority, which he had at the common law, in judging the conveniency and time when they ſhall be executed; and as the king hath the legiſlative power of peace and war, in a public treaty for the nation's good, they may be notified and then revoked by the great ſeal, in purſuance of that treaty, and princes are always cautious in the framing and compoſing ſuch letters patent, ſo as they may not be reckoned a breach of the peace, which the granting them (for particular ſatisfaction) in the *ordinary* way, does not amount to.

The *extraordinary repriſals* are by letters of marque, for reparation at ſea, or any place out of the realm, grantable by the *ſecretaries of ſtate*, with the like approbation of the king or council, or both; but they are only during the king's pleaſure, and to weaken the enemy during the time of war, and may, at any time, be revoked. *Molloy* de Jure Mar. P. 32. S. 10.

But, before granting letters of marque, there gradually precede two or three letters of requeſt, and, according to the ſatisfaction, ſufficient or inſufficient, returned in anſwer, commiſſions are awarded or denied; and the prince or ſtate, whoſe ſubject the injured perſon is, ſhould not value his misfortune at ſo low a rate, as to refuſe him the former, for that would be to accumulate injuries, but ſhould likewiſe, if juſtice be denied, after ſuch requeſt, arm him with power to take ſatisfaction by repriſe, *Vi, Manu, & Militari.* S. 11.

Subjects cannot by force hinder the execution even of an unjuſt judgment, or lawfully purſue their right by force, by reaſon of the *efficacy* of the power over them: But foreigners have a right to compel, which yet they cannot uſe lawfully, ſo long as they may obtain ſatisfaction by judgment; though, if that ceaſes then repriſal is let in. P. 33. S. 12.

Judgment is obtained either in the *ordinary* courſe, by way of *proſecution*, or *ſuit*, or *appeal* from the ſame, after ſentence or judgment given, to a higher court; or elſe in the *extraordinary* way, which is by ſupplication, or petition, to the ſupreme power; but we muſt underſtand that to be when the matter in controverſy is, *tam quoad merita quam quoad modum procedendi*; not doubtful; for, in doubtful matters, the preſumption is ever for the judge or court. S. 13.

But the repriſal muſt be grounded on wrong judgment given, in matters, *not doubtful*; which might have been redreſſed in ſome ſhape, either by the *ordinary* or *extraordinary* power of the country or place, and the which was apparently *perverted* or *denied*: Though, if the matter be doubtful, it is then otherwiſe; for in cauſes dubious or difficult, there is a preſumption always, that juſtice was truly adminiſtered by them who were duly elected and appointed for that purpoſe.

And yet, in this latter caſe, ſome are of opinion, if it was dubious, and, if the judgment was againſt apparent right, the ſtranger oppreſſed is let into his ſatisfaction; and the reaſon is, becauſe the judge's authority is not the ſame over foreigners as over ſubjects, for the motive or cauſe above-mentioned. *Paulus Leg.* Julia D. de Cond. indebitor.

If an *Engliſh* merchant ſhall proſecute a ſuit in the ordinary courts of law beyond ſeas, and ſentence or judgment ſhall paſs againſt him, from which he appeals to the ſupreme court, and there the firſt judgment or ſentence is confirmed, though the complaint hath received a judgment contrary to right and equity, yet this will be no cauſe for letters of repriſal, though, perhaps, it may occaſion letters of requeſt, if the circumſtance and reaſons are ſtrong for the ſame, to have a rehearing.

But, if an *Engliſhman* ſhall have right to recover a debt there, and the debtor is committed to the cuſtody of an officer till payment, and he wilfully lets the priſoner eſcape, who then becomes inſolvent, this circumſtance may occaſion letters of repriſal.

In *England*, if a foreigner bring an action perſonal againſt *I. S.* and the matter is found *ſpecial* or *general*, and the party prays judgment, and the court refuſes it, and then the defendant dies, and with him the action, the nature of it being ſuch, the party is here without remedy, and the ſame may occaſion letters of repriſal, if it be accompanied

with thoſe circumſtances that evince an apparent denial of juſtice, *i. e.* putting it off from *term* to *term* without cauſe.

An *Engliſhman* proſecutes his right in the legal courts beyond ſeas, and the military governor oppoſes the proſecution, and by force conveys away the debtor, and his goods, and the ſentence or judgment is obtained: Its ultimate end being execution, is, by the aforementioned means, fruſtrated, and may occaſion letters of repriſal.

If any perſon ſhall be murdered, ſpoiled, or otherwiſe damaged, in hoſtile manner, in the territories or places belonging to any king, to whom letters of requeſt are iſſued forth; and, if no ſatisfaction be made for the injury, letters of repriſal may be granted, as the petitioning parties are not in ſuch caſes compelled to reſort to the ordinary proſecution; but the prince of the country, againſt whom the ſame are awarded, muſt repair the damage out of his, or their eſtates, who committed the injuries; and, if that proves deficient, it muſt then fall as a common debt on this country. *Molloy* de Jure Mar. P. 34. S. 15.

Such letters of requeſt generally allot a time certain for damages to be repaired, and, if not complied with, repriſals are to iſſue: Thus, after the maſſacre at *Amboyna*, and other depredations committed by the *Flemiſh* on the *Engliſh*, his majeſty, in 1625, iſſued forth his letters of requeſt to the States of *Holland*, for ſatisfaction within eighteen months, otherwiſe letters of repriſal ſhould be granted; and king *Charles* II. iſſued letters of requeſt to the ſaid States, for ſatisfaction to be granted to *William Courten*, Eſq. for depredations made by their ſubjects on two of his ſhips; but, not obtaining it in the limited time, he granted to the partners and heirs of the ſaid *Courten* his letters of marque, in the form following:

CHARLES II. by the grace of God, of *England*, *Scotland*, *France*, and *Ireland*, king, defender of the faith, &c. to all chriſtian people to whom theſe preſents ſhall come, greeting: WHEREAS our loving ſubject *William Courten*, Eſq. deceaſed, and his partners, *Anno*, 1643, by the depradation and hoſtile act of one *Gailand*, commander in chief of two ſhips belonging to the *Eaſt India* company of the *Netherlands*, was, between *Goa* and *Macao*, in the ſtrait of *Malacca*, deprived, and moſt injuriouſly ſpoiled of a certain ſhip named the *Bona Eſperanza*, and of her tackling, apparel, and furniture, and all the goods and lading in her, upon a very hopeful trading voyage to *China*, which were carried to *Batavia*, and there all, *de facto*, without due proceſs of law, confiſcated. And that alſo in the ſame year, another laden ſhip of our ſaid ſubject called the *Henry Bonadventure*, being come on ground near the iſland *Mauritius*, was there, both ſhip and goods ſeized upon by ſome of the officers and miniſters, and others under the command of the ſaid *Eaſt India* company, and utterly detained from the right owners. AND WHEREAS the ſaid *William Courten*, and his aſſigns in his life-time, uſed all poſſible endeavours to recover the ſaid ſhip and goods, and to procure further juſtice againſt the maleſactors, and yet could obtain no reſtitution or ſatisfaction, whereby they became to be much diſtreſſed and utterly undone in their eſtates and credit: And that thereupon, and upon the moſt humble ſupplications and addreſſes of *Francis* earl of *Shrewſbury*, and *William Courten*, Eſq. grandchild and heir of the ſaid *William*, deceaſed, *Sir John Ayton*, and *Sir Edmund Turner*, knights, *George Carew*, and *Charles Whitaker*, Eſqrs. on the behalf of themſelves and divers others, intereſted in the ſaid two ſhips *Bona Eſperanza*, and *Henry Bonadventure*, and in the eſtates of the ſaid *William Courten*, deceaſed, *Sir Richard Littleton*, baronet, and *Sir Paul Pinder*, knight, deceaſed, that we would take their caſe into our princely conſideration. WE, OUT OF A JUST SENSE we then had, and ſtill have, of their utmoſt SUFFERINGS, in that buſineſs, both by our own letters under our SIGN MANUAL, to the *States General* of the *United Provinces*, and by *Sir George Downing*, knight and baronet, our envoy extraordinary, to whom we gave eſpecial command ſo to do, required ſatisfaction to be made, according to the rules of juſtice, and the amity and good correſpondence, which we then deſired to conſerve with them firm and inviolable. AND WHEREAS after ſeveral addreſſes made to the ſaid *States General* by our ſaid envoy, and nothing granted effectual for relief of our ſaid ſubjects, whom we take ourſelves in honour and juſtice concerned to ſee ſatisfied and repaid, we lately commanded the ſaid Sir *George Downing* to intimate and ſignify to the ſaid *States* that we expected their final

anſwer,

anſwer, concerning ſatisfaction to be made for the ſaid ſhip and goods, by a time then prefixed and ſince elapſed, that we might ſo govern ourſelves thereupon, that our oppreſſed ſubjects might be relieved according to right and juſtice; and yet no ſatisfactory anſwer has been given, ſo that we cannot but apprehend it to be not only a fruitleſs endeavour, but a proſtituting of our honour and dignity, to make further application, after ſo many denials and ſlightings: AND WHEREAS *John Exton*, doctor of law, judge of our high admiralty court of *England*, upon our command to certify to us the value of the loſſes and damages ſuſtained by the ſaid *William Courten* and partners, whoſe intereſt is now veſted in our loving ſubjects Sir *Edmund Turner*, knight, and *George Carew*, Eſq. and partners, hath, upon full examination, and proof thereof made by witneſſes in our high court of admiralty, reported and certified under his hand, that the ſame do amount to the ſum of *one hundred and fifty-one thouſand ſix hundred and twelve pounds.*

NOW KNOW YE, that, for a full reſtitution to be made to them, for their ſhips, goods, and merchandizes, of which the ſaid *William Courten*, and the aſſigns of the ſaid *William Courten*, and partners, were ſo deſpoiled as aforeſaid, with all ſuch coſts and charges as they ſhall be at, for the recovery of the ſame, We, by the advice of our privy council, have thought fit, and by theſe preſents do grant, licence, and authoriſe, under our great ſeal of *England*, unto our ſaid ſubjects, Sir *Edmund Turner* and *George Carew*, their executors, adminiſtrators, and aſſigns, for, and on behalf of themſelves, and other perſons intereſted as aforeſaid, to equip, victual, furniſh, and ſet to ſea, from time to time, ſuch, and ſo many ſhips and pinnaces, as they ſhall think fit; PROVIDED ALWAYS, that there be an entry made and recorded in the admiralty court of the names of all ſhips and veſſels, and of their burden and ammunition, and for how long time they are victualled, and alſo of the name of the commander thereof, before the ſame or any of them be ſet forth to ſea; and with the ſhips and pinnaces, by force of arms, to ſet upon, take, and apprehend any of the ſhips, goods, monies, and merchandizes of the *States General*, or any of the ſubjects inhabiting within any their dominions or territories, whereſoever the ſame ſhall be found, and not in any port or harbour in *England* or *Ireland*, unleſs it be the ſhips and goods of the parties who did the wrong. And the ſaid ſhips and goods, monies, and merchandizes, being ſo taken, and brought into ſome port of our realms and dominions, an inventory thereof ſhall be taken, by authority of our court of admiralty, by the judge or judges thereof for the time being, and upon proof made before him or them, that the ſaid ſhips, goods, wares, merchandizes, or money did belong to the *States General*, or any of their ſubjects, as aforeſaid, they ſhall be judged lawful prize of the ſaid Sir *Edmund Turner* and *George Carew*, their executors, adminiſtrators and aſſigns, as aforeſaid, to retain and keep in their, or any of their poſſeſſions, and to make ſale, and diſpoſe thereof in open market, or however elſe, to their, and every of their beſt advantage and benefit, in as ample manner as at any time heretofore hath been accuſtomed by way of repriſal, and to have and enjoy the ſame as lawful prize, and as their own proper goods: SO THAT "NEITHER captain, maſter, nor any of the company, that ſhall ſerve in his own perſon, or ſhall promote and advance the ſaid enterprize, in manner and form aforeſaid, ſhall, in any manner or wiſe, be reputed or challenged, for any offender againſt any of our laws. And that alſo it ſhall be lawful for all manner of perſons as well our ſubjects as any others, to buy the ſaid ſhips, goods, and merchandizes, ſo taken and apprehended by the ſaid captains, maſters and others, and adjudged as aforeſaid, without any damage, loſs, hindrance, trouble or moleſtation, or incumbrance, to befal the ſaid buyers, or any of them, in as ample and lawful manner, as if the ſhips, goods, wares, and merchandizes, had been come, and gotten by the lawful traffick of merchants, or of juſt prizes in time of open war." PROVIDED ALWAYS, that all ſhips, goods, and merchandize, taken by virtue of this our commiſſion, ſhall be kept in ſafety, and no part of them waſted, ſpoiled, or diminiſhed, or the bulk thereof broken, until judgment hath firſt paſt, as aforeſaid, that they are the ſhips and merchandizes of the *States General*, or their ſubjects as aforeſaid. And if by colour of this our commiſſion, there ſhall be taken any ſhips, goods, or merchandizes, of any of our loving ſubjects, or the ſubjects of any prince or ſtate in good league or amity with us, except the *States General*, or their ſubjects as aforeſaid, and the goods therein laden, ſold and embezzled, or diminiſhed, or the bulk thereof broken, in any place before they ſhall be adjudged to belong to the *States General*, or ſome of their

ſubjects,

ſubjects, as aforeſaid, then this commiſſion ſhall be of no ſufficient authority to take the ſaid ſhips, goods, and merchandizes, or to warrant, or to ſave harmleſs, ſuch as ſhall receive, buy, or intermeddle therein; but both the prizes ſo taken, and the ſaid ſhip of war, ſhall be confiſcated to our uſe. "AND FURTHER, We do hereby declare, that it is our will and pleaſure, that this our commiſſion ſhall remain in full force and power, to all intents and purpoſes, until the ſaid Sir *Edmund Turner* and *George Carew*, their executors, adminiſtrators, and aſſigns, as aforeſaid, ſhall, by virtue thereof, have, by force of arms, apprehended, taken, ſeized, recovered, and received, from the *States General*, or their ſubjects, *one hundred and fifty-one thouſand ſix hundred and twelve pounds*, according to the appraiſement to be made by ſufficient appraiſers, upon oath nominated and authoriſed in our ſaid court of admiralty, of all ſuch ſhips, goods, wares, and merchandiſes, as ſhall be taken from the ſaid *States General*, or any of their ſubjects, by virtue of this commiſſion, or ſhall otherways receive ſatisfaction of the debt aforeſaid, by compoſition to be made between thoſe of the *Eaſt India* company of the *Netherlands*, and the ſaid Sir *Edmund Turner* and *George Carew*, their executors, adminiſtrators, and aſſigns, as aforeſaid. NOTWITHSTANDING it ſo happen, the preſent difference between us and the *States General* depending upon general repriſals, may be agreed and compoſed, and that in the interim a peace and good correſpondence may be renewed between us and the ſaid *States General*; *In which caſe, nevertheleſs*, it is our will and pleaſure that in the execution of this our commiſſion no violence ſhall be done to the perſons of the ſaid ſubjects of the ſaid *States General*, but only in caſe of reſiſtance; and that after, in cold blood, the ſubjects of the ſaid *States General*, if hurt or wounded, ſhall be uſed with all convenient offices of humanity and kindneſs. AND FURTHER, our will and pleaſure is, that although it ſhall happen, that all hoſtility between us and the *States General*, and our reſpective ſubjects ſhall ceaſe, yet this our commiſſion ſhall be and remain in full force and power to the ſaid Sir *Edmund Turner* and *George Carew*, their executors, adminiſtrators, and aſſigns, as aforeſaid, by virtue thereof, to apprehend, take, and ſeize, by force and arms, ſo many more of the ſaid ſhips and goods of the *States General*, or any of their ſaid ſubjects, as, beſides the ſaid ſums beforementioned, ſhall countervail, ſatisfy, and pay all ſuch coſts and charges, as the ſaid Sir *Edmund Turner* and *George Carew*, their executors, adminiſtrators or aſſigns, as aforeſaid, ſhall, from time to time, make proof to have diſburſed and paid towards the equipping, manning, paying, furniſhing, and victualling of the ſaid ſhips, ſo licenſed and authorized as aforeſaid, by this our ſaid commiſſion, to be equipped, manned, furniſhed, and victualled, by the ſaid Sir *Edmund Turner* and *George Carew*, their executors, adminiſtrators, and aſſigns as aforeſaid, for the purpoſes aforeſaid." AND OUR WILL and pleaſure is, and We do hereby require our judge or judges, of our high court of admiralty, for the time being, and all other officers of the admiralty, and all other our judge or judges, officers, miniſters, and ſubjects whatſoever, to be aiding and aſſiſting to the ſaid Sir *Edmund Turner* and *George Carew*, their executors, adminiſtrators, and aſſigns, as aforeſaid, in all points in the due execution of this our royal commiſſion, and to proceed to adjudications, and adjudge all ſhips, merchandizes, monies, and goods, by virtue thereof to be taken, according to our princely intention hereby ſignified and favourably interpreted and conſtrued, in all reſpects, to the benefit and beſt advantage of the ſaid Sir *Edmund Turner* and *George Carew*, their executors, adminiſtrators, and aſſigns, as aforeſaid. IN WITNESS whereof, We have cauſed theſe our letters to be made patent. Witneſs ourſelf at *Weſtminſter*, the 19th day of *May*, in the ſeventeenth year of our reign. BY THE KING.

It is not the place of any man's *nativity*, but that of his *domicil* and *abode*, not of his *origination*, but of his *habitation*, that ſubjects him to *repriſe*; the law doth not ſo much conſider where he was born, as where he lives; therefore if letters of repriſal ſhould be awarded againſt the ſubjects of the *grand duke* of *Tuſcany*, and a native of *Florence*, but denizened or naturalized in *England*, ſhould have a ſhip, in a voyage to *Leghorn*, taken, the capture is not lawful, nor can ſhe be made a prize. Yet, by the laws of *England*, a natural-born ſubject cannot diveſt himſelf of his allegiance, though he happens to be commorant, or a dweller in the enemy's country. *Molloy* de Jure Mar. P. 40. S. 16.

It

It does not appear from any precedents, that repriſals can be granted on misfortunes happening to perſons on their goods, reſiding or being in foreign parts in time of war there; for, if any misfortune happens, or is occaſioned to their effects, or to their perſons, they muſt contentedly ſit down under their loſs; it being their own fault that they would not fly or quit the place, when they foreſaw the country was expoſed, or would be ſubject, to the ſpoil of ſoldiers and devaſtations of the enemy. *Molloy* de Jure Mar. P. 41. S. 17.

By *right*, there are many perſons exempted, and thoſe whoſe perſons are ſo priviledged have alſo protection for their goods, ſome by the law of nations, ſome by the *civil law*, others by the *common law*; among which the ambaſſadors, by the laws of nations, their retinue and goods, are exempt, coming from him who awarded *repriſe*; the law of nations not only provides for the dignity of him that ſends, but alſo the ſecure going and coming of him that is ſent. S. 18.

Travellers through a country, whoſe ſtay is but ſhort, and a merchant of another place than that againſt which repriſals are granted, although the factor of his goods was of that place, are not ſubject to *repriſals*.

When ſhips are driven into port by ſtorm or ſtreſs of weather, they have an exemption from the law of *repriſals*, according to the *jus commune*, though by the law of *England*, it is otherwiſe, unleſs expreſsly provided for in the writ or commiſſion; but, if ſuch ſhips fly from their own country to avoid confiſcation, or for ſome other fault, and are driven in by ſtreſs of weather, they may, in ſuch caſe become ſubject to be *prize*; though it is unlawful to make ſeizure in any ports for *repriſals*, but in that prince's who awarded them, or in his againſt whom the ſame is iſſued; for the ports of other princes or ſtates are ſacred, and the peace of them not to be violated or diſturbed, but juſtly to be obſerved and maintained. P. 42. S. 19.

If any ſhip, carrying letters of *repriſe*, attacks a veſſel, and ſhe refuſes to yield, ſhe may be aſſaulred and entered; and, if it falls out, though by accident, that ſome of thoſe who reſiſt are ſlain, the fault will lie at their own doors, for endeavouring to hinder the execution of what is right, and which the law both approves and warrants. *Grot.* de Jure Belli, Lib. 3. C. 2. S. 4.

By the law of nations, *ipſo facto*, the dominion of the things taken by thoſe to whom letters of marque are granted become the captor's, till the debt and coſts, that is, the original damage, and ſubſequent charges, are ſatisfied; which being done, the reſidue ought to be reſtored. So the *Venetians* uſed their equity, having taken the ſhips of *Genoa*: They did not ſpoil any of the lading, but preſerved the ſame very carefully till the debt was paid, which done, an entire reſtitution of the things was made, without any diminution. *Greg.* Lib. 9.

When, perhaps, for the fault of a few a debt becomes national, by reaſon of which the goods of the innocent becomes liable, if taken, for ſatisfaction, in ſuch caſe the perſon ſo ſuffering is entitled to contribution for his relief, being put to the whole burthen, where more are bound to the ſame thing.

Yet, when depredations have happened to foreign merchants, our kings, on complaint, have often iſſued commiſſions to enquire of the ſame; and it was ſo done upon the petition of ſome *Genoeſe* merchants, who complained againſt the inhabitants of the iſle of *Guernſey*, for a depredation in taking away and detaining their merchandize and goods to a very great value, out of a ſhip wrecked by tempeſt near that iſle, and the commiſſioners were empowered to puniſh the offenders, and to make reſtitution and ſatisfaction for the damages. *Molloy* de Jure Mar. P. 46. S. 28. *Pat.* 26 *Edw.* III.

The like complaint was made by the merchants of the duke of *Bretagne*, of certain depredations committed by the ſubjects of the king of *England*, who iſſued forth the like commiſſion, to give them reparation and damages for the ſame; ſo that if the ſubjects of the king of *England* ſhould have their goods taken by way of repriſe for the ſatisfaction of ſuch debt or damage, they may have the benefit of the like commiſſions, to make themſelves whole out of the eſtates of the offenders. *Pat.* de Ann. 6. H. V.

Of

Of *Privateers* or *Capers*.

PRIVATEERS and CAPERS are ſynonimous terms for the ſame thing, with this only difference, that the latter are ſmaller veſſels than the others; they are generally eſteemed private ſhips of war, fitted out by particulars in order to annoy the enemy, though the commiſſion is neither ſo laſting nor ſo honourable as that given to the commander of a king's ſhip, the one being certain, and continued whilſt his behaviour is unexceptionable, the other only temporary and occaſional; the one appointed by his majeſty, the other by a ſubject, with the prince's approbation, and liable to be turned out at the owner's pleaſure; and, though ſuch appointments are ancient, and very uſeful in a war, by diſtreſſing the enemy, yet many eſteem the action but one remove from piracy; as the undertakers are ſuppoſed to have no immediate injury done them, nor have any other motive but the hopes of gain, to animate them to the engagement, or to induce their commencing a trade of rapine and ſpoil on the perſons and goods of innocent traders; and, by theſe means, to increaſe the horrors and calamities which war naturally brings with it, and inſpires; but whoſoever reflects, that every individual is injured, when the nation in general is ſo; and that, if this has a right to vindicate or revenge its wrongs, particulars muſt be juſtified in affording their aſſiſtance; we muſt conclude that, in ſo doing, they only comply as good ſubjects, whilſt their proceedings remain directed by authority, and their ſucceſſes againſt the enemy are managed with that humanity our own natures and the law of nations enjoin.

However, leaving theſe diſputes to be determined by caſuiſts, I ſhall proceed to inform my reader of the nature and power of ſuch armed veſſels, and on what footing they have generally been fitted out in the late and former wars; and this has been under two different and diſtinct commiſſions, as will hereafter be ſhewn.

The one of them is cuſtomarily granted to the petitioners for it, after they, at their own expence, have fitted out a privateer; and impowers them to appropriate to their own uſe whatever prize they make, after a legal condemnation, and the government allows them beſides 5l. * for every man aboard a man of war or privateer taken or deſtroyed at the beginning of the engagement, and 10l. † for every gun ſhe had mounted, with liberty of cruiſing where they pleaſe; and in caſe we are at war with more potentates than one, as lately with the *French* and *Spaniards*, they muſt have commiſſions for acting againſt them both, otherwiſe a captain carrying only one againſt the *Spaniards*, and in this courſe meets with and takes a *Frenchman*, this prize is not good, but would be taken from him by any man of war he met, and could not be condemned, *for him*, in the admiralty, as many experienced in the late war.

The manner of fitting out theſe privateers has commonly been at the joint expence of ſeveral merchants, and is always very expenſive; as warlike ſtores are at all times coſtly, and their prices more eſpecially raiſed on theſe occaſions, when the demand for them is conſiderably increaſed.

In ſome of theſe adventures, the men on board go on the terms of no purchaſe no pay; and, in this caſe, the produce of whatever is taken goes half to the ſhip, for the owners, and half to the men, divided to them according to the articles of agreement; but when the men ſail for wages the captures appertain entirely to the owners, except a ſmall part, which is commonly ſtipulated to be given the ſailors, *extra* of their wages, in order to animate them in their behaviour; and both ways of arming are regulated by the articles entered into between the owners and mariners, of which I ſhall add a copy at the end of this chapter, for my reader's information.

The other commiſſion afore-mentioned is granted to privateers taken into the king's ſervice, which notwithſtanding are fitted out at the expence of private perſons, and then let out to the government, who generally pay them ſo much per month for their hire, and

* 13 and 17 *Geo.* II. † 4 and 5 *Will.* and *Mar.*

and engage to repair them, in caſe of damage, and to pay the value agreed for, in caſe of loſs.

In king *William's* reign many large private ſhips were engaged for in this manner, and ſent abroad as convoys, &c. but ſince our marine is ſo greatly increaſed, the government does not ſo much ſtand in need of the merchants' aſſiſtance in this ſhape as they formerly did, and conſequently do not ſo often call for it.

No privateer may attempt any thing againſt the law of nations, as to aſſault an enemy in a port or haven under the protection of any prince or republick, be he friend, ally, or neuter; for the peace of ſuch place muſt be kept inviolable. *Malloy* de Jur. P. 49. S. 7.

And, at the time of granting theſe private commiſſions, great care is always taken, by bond, to preſerve the leagues with our allies, neuters, and friends, according to the various and ſeveral treaties ſubſiſting between us; and it is for this reaſon that ſecurity is demanded, and given by reſponſible men, not concerned in the ſhip, to the value of 1500l. for all ſhips carrying leſs than 150 men, and 3000l. for every ſhip carrying more, that they will give full ſatisfaction for any damage or injury that they ſhall commit in their courſes at ſea, contrary to and in breach of the aforeſaid treaties, and alſo under the penalties of forfeiting their commiſſions, and for which their ſhips are likewiſe made liable. Treaty marine with *Holland* at *London*, Dec. 1, 1674, Art. 10. Treaty marine with *France*, at *St. Germains en Laye*, *Feb.* 24, 1676-7, Art. 10.

If a ſuit be commenced between the captor of a prize and the claimer, and there is a ſentence or decree given for the party reclaiming, ſuch ſentence or decree, upon ſecurity given, ſhall be put in execution, notwithſtanding the appeal made by him that took the prize, which ſhall not be obſerved, in caſe the ſentence ſhall be given againſt the claimers. Art. 13.

And whereas the maſters of merchant ſhips, and likewiſe the mariners and paſſengers, do ſometimes ſuffer many cruelties and barbarous uſages when they are brought under the power of ſhips which take prizes in the time of war, the takers in an inhuman manner tormenting them, thereby to extort from them, ſuch confeſſions as they would have to be made: *It is agreed*, that both his majeſty and the States General ſhall, by the ſevereſt proclamations, forbid all ſuch heinous and inhuman offences; and as many as they ſhall, by lawful proofs, find guilty of ſuch acts, they ſhall take care that they be puniſhed with due and juſt puniſhment, and which may be a terror to others; and ſhall command that all the captains and officers of ſhips, who ſhall be proved to have committed ſuch heinous practices, either themſelves, or by inſtigating others to act the ſame, or by conniving while they were done, ſhall, beſides other puniſhments to be inflicted proportionally to their offences, be forthwith deprived of their offices reſpectively: And every ſhip brought up as a prize, whoſe mariners or paſſengers ſhall have ſuffered any torture, ſhall forthwith be diſmiſſed and freed, with all her lading, from all further proceeding and examinations againſt her, as well judicial as otherwiſe. Treaty of commerce with *Spain*, *May*, 13, 1667, Art. 22, 23. Ditto with *Holland*, *July* 21, 1667, Art. 26, 27. Ditto, *Feb.* 7, 1667-8, Art. 1, 2. Ditto with *Denmark*, *July* 11, 1670. Art. 16.

Ships may freely ſail to and trade with all kingdoms, countries, and eſtates, which ſhall be in peace, amity, or neutrality, with the prince whoſe flag they carry, and who is at preſent at peace with us, and are not to be moleſted by us, on account of any hoſtilities that may at preſent ſubſiſt, or hereafter may happen, between his *Britannick* majeſty and thoſe eſtates, provided ſuch ſhips are not bearers of contraband goods. Treaty marine with *Holland*, *Dec.* 1, 1674, Art. 1, 2. Ditto with *France*, *Feb.* 24, 1676-7, Art. 1, 2. Ditto with *Spain*, *May* 13, 1667, Art. 24. Ditto with *Holland*, *July* 21, 1667, Art. 28. Ditto, *Feb.* 7, 1667-8, Art. 3. Treaty marine with Ditto, *Dec.* 1, 1674, Art. 3. Treaty marine with *France*, *Feb.* 24, 1676-7, Art. 3. Ditto with *Holland*, *London*, *Dec.* 1, 1674, Art. 7.

And to avoid diſputes about the underſtanding the term of contraband goods, they are expreſsly determined to be ONLY *arms, pieces of ordnance, with all implements belonging to them, fireballs, powder, matches, bullets, pikes, ſwords, lances, ſpears, halberts, guns, mortar-pieces, petardes, bombs, granadoes, fire-crancels, pitched hoops, carriages, muſquet reſts, bandeliers, ſaltpetre,*

ſaltpetre, muſquets, muſquet ſhot, helmets, corſlets, breaſt plates, coats of mail, and the like kind of *armature, ſoldiers, horſes,* and all things neceſſary for the *furniture of horſes; holſters, belts,* and all other warlike inſtruments whatſoever.

All other goods whatſoever, are, by the aforementioned treaties, permitted freely to be carried, except to places beſieged, and therefore a privateer has no right to put any hindrance thereto; but if he makes a prize of a ſhip laden entirely with the above-mentioned contraband goods, both ſhip and lading will be condemned; and if part be prohibited goods, and the other part not, the former only ſhall become prize, and the ſhip and the remainder be ſet free; and, in caſe the captain of the merchant-ſhip will deliver to the captor that part of his cargo which is prohibited, the other ſhall receive it, without compelling the merchantman to go out of her courſe to any port he thinks fit; but ſhall forthwith diſmiſs her, and upon no account hinder her from freely proſecuting her deſtined voyage.

If ſuch ſhips ſhall be attacked in order to be examined, and ſhall refuſe ſubmitting thereto, they may be aſſaulted and entered by force; and if the perſons aboard do not yield and ſurrender, thoſe that reſiſt may be ſlain. *Molloy* de Jure Mar. P. 52. S. 13. See Ditto on repriſals, S. 20. Ditto, S. 14.

But if any privateer wilfully commits any ſpoil, depredations, or any other injuries, either on the ſhips of friends or neuters, or on the ſhips and goods of their fellow ſubjects, they will be puniſhed, in proportion to their crimes, either with death or otherwiſe, and their veſſels may likewiſe be ſubject to forfeiture.

Whether a ſhip taken be a lawful prize or not, ſhall be tried in the admiralty; and no prohibition ſhall be granted. In the war between us and *Denmark*, a *Scotch* privateer took a ſhip as prize, being a *Daniſh* one, and ſhe was condemned as a lawful prize by the admiralty in *Scotland*, and brought her upon the land; and S. libelled in the admiralty of *England*, ſuggeſting that ſhe was not a *Denmarker*, but a ſhip of *London*. *Per Curiam.* In as much that the matter is prize, or not prize, no prohibition. *Thompſon* v. *Smith*, 1 *Sid.* 320. 2 *Keeble* 158, 176.

One who had letters of marque in the laſt *Dutch* war, took an *Oſtender* for a *Dutch* ſhip, and brought her into harbour, and libelled againſt her as a prize; and the *Oſtender* libelled in the admiralty againſt the captor for damages ſuſtained by hurt the ſhip had received in port; and a prohibition was prayed, becauſe the ſuit was for damage done in port, for which an action lies at the *common law*; but the prohibition was denied, as the original was a caption at ſea, and the bringing her into port, in order to have her condemned as a prize, is but a conſequence of it, and not only the original but alſo the conſequence ſhall be tried here. *Raymond* 473. *Hughs* v. *Cornelius* & alios *Turner* and *Cary* cont. *Neele*, 1 *Lev.* 243. 1 *Sid.* 367; 2 *Keeble* 360, 364. 1 *Vent.* 173.

And therefore if he, who hath letters of marque or repriſal, takes the ſhips and goods of that nation againſt whom the ſame are awarded, and carries them into the port of any neuter nation, the owners may there ſeize her, or there the admiral may lawfully make reſtitution, as well of the ſhips and goods to the owners as the captive perſons to their liberty, for that the ſame ought firſt to have been brought *infrà preſidia* of that prince or ſtate by whoſe ſubjects, and under whoſe commiſſion, the ſame was taken. *Barthol.* in Lege ſi quid Bello D. de Cap. Ang. & Salic. in Leg. ab Hoſtibus C. de Capt. Conſt. Gall. 20. Tit. 13. Art. 24. Conſul Maris 287.

And this is entirely agreeable to the *common law*; for a *Dunkirker*, having taken a *French* veſſel, was driven into *Weymouth*, and ſold her there before ſhe was brought *infrà preſidia Dom. Regis Hiſp.* and in this caſe it was ruled, that if a ſhip be taken by piracy or letter of marque and repriſal, and is not brought *infrà preſidia* of that prince or ſtate by whoſe ſubjects the ſame was taken, it could not become a lawful prize, nor were the owners by ſuch a capture diveſted of their property; but, if the caption be by the king's ſhips, the property will be immediately in the captors, and never be diveſted, unleſs afterwards it be recovered by its former proprietors, or be in battle regained. *Trin.* 17. *Car.* I. in B. R. *March* 1 Rep. 110. 2 *Keeble* 441. *Norris* v. *Barcley.*

If two ſhips with letters of marque accidentally meet with a prize at ſea, though only one attacks and takes her, yet the other being in ſight ſhall have an equal ſhare of the prize, though he afforded no aſſiſtance in her capture; becauſe his preſence however

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ſtruck a terror in the enemy, and made him yield, which perhaps he would not have done had his conqueror been ſingle; ſo that all ſhips that are in ſight, though they cannot come up to aſſiſt in the engagement, are entitled by the *common law* to an equal diſtribution in the ſpoil. *Mich.* 32 *Eliz. Somers* and *Sir Richard Bulkley*'s caſe. *Leonard* 2. P. 182.

But if thoſe to whom letters of marque are granted ſhould, inſtead of taking the ſhip and goods appertaining to that nation, againſt which the ſaid letters are awarded, *wilfully* take, or ſpoil the goods of another nation in amity, this would amount to a downright *piracy*, and the perſons ſo offending would, for ſuch fault, forfeit their veſſel, and the penalties in which their ſecurities are according to late cuſtom bound on taking out ſuch letters, notwithſtanding their commiſſion; but this muſt be underſtood, where ſuch a capture is done in a piratical manner; for it is made upon a ſtrong preſumption, ſupported by many circumſtances and appearances, that a caption is juſt, as belonging to him againſt whom the repriſals are granted, though, if on examination it proves otherwiſe, and the ſuffering parties have their ſhip and goods reſtored, yet the captors are not liable to puniſhment, though ſometimes they may be to damages. On the contrary, they are juſtified in endeavouring to recover their right, or diſtreſs the enemy, for which the letters were granted them, though in effecting it they may be miſtaken, as it is natural for the enemy to cover their effects in the beſt manner they can. It would be impoſſible always to determine the affair at ſea, therefore it is allowable to bring a dubious capture into port, in order to more nice and juſt ſcrutiny and inſpection, otherwiſe the goods of an enemy would often eſcape, as it frequently happened in the late war. However, to guard againſt unlawful ſeizures, the government have wiſely directed ſufficient caution to be given, as before-mentioned, for the due obſervance of the letters according to law, before they permit their iſſuing; and where there is a breach committed, the penalties are inflicted. *Roll's* Abridg. P. 530. *Moor.* 776.

And in order to avoid all illegal proceedings, but to act with due regularity and conformity with the tenor of the letters granted, whenever a prize is taken and brought *infrà præſidia*, the captor muſt exhibit all the ſhip's papers and captivated mariners to be examined in order to adjudication; till when bulk ought not to be broken, nor may the captain of the capture ſuffer any embezzlement of the lading, or ſell, barter, or diſpoſe of any part without commiſſion, as the ſubſequent acts will ſhew.

The uſe of this ſort of veſſels we were taught by our neighbours, and obliged by their example to encourage them, who, in the firſt long war, almoſt covered the ſeas, and, like locuſts, devoured every thing they could overpower; and, in the late war, we ſufficiently experienced their utility, if diſtreſſing the enemy may be termed ſo, as they advantageouſly inculcated the leſſon of the original teachers, and almoſt ruined the trade of the firſt inventors of theſe annoyances, ſo deſtructive to the peaceful mercantile employ; and that we might not be tardy in encountering the enemy at their own weapons, the legiſlature have thought proper to encourage this way of moleſting them, in the following acts; which I inſert at length, though a great part being only temporary are now expired, but will, in all probability, be revived in any future war.

The lord high admiral, commiſſioners of the admiralty, or any three of them, or their deputies elſewhere, ſhall, after the 4th day of *January*, 1739, grant commiſſions, or letters of marque, on requeſt of any owners of veſſels, on their giving the uſual ſecurity, to any perſon whom ſuch owner ſhall nominate commander, or, in caſe of death, ſucceſſive commanders of ſuch veſſels, except only for the payment of the tenths of the prizes to the lord high admiral, or commiſſioners of the admiralty, for the attacking and taking any fortreſs by land, or any ſhip, ſtores, merchandizes, &c. poſſeſſed by the enemy, in any ſea, creek, haven, or river, and that ſuch ſhip, &c. being firſt adjudged lawful prize ſhall wholly belong to the owners of ſuch privateers, and the captors, in ſuch proportion as ſhall have been beforehand agreed on between themſelves paying the duties hereafter mentioned. 13 *Geo.* II. P. 132, 133.

The judge, &c. of ſuch court of admiralty ſhall, if requeſted thereto, finiſh, within five days, the uſual preparatory examination for trial of prizes, and the proper monition ſhall be iſſued and executed in three days after requeſt; and, in caſe no claim of ſuch capture ſhall be duly entered, and atteſted on oath, giving twenty days' notice after the execution of ſuch monition; or if there be ſuch claim, and the claimants ſhall not,

within five days, give ſecurity, to be approved of by ſuch court of admiralty, to pay double coſts to the captors, in caſe the ſame be judged lawful prize; then the judge, &c. of ſuch court of admiralty, on producing to him the examination, or copies thereof, and producing on oath all papers taken in ſuch capture, or on oath made that no ſuch papers were found, ſhall immediately acquit ſuch capture. or condemn it as lawful prize. And, in caſe ſuch claim be duly entered, and ſecurity given, and no occaſion appears to examine diſtant witneſſes, then ſuch judge, &c. ſhall examine the preſent witneſſes, and, within ten days after claim and ſecurity, proceed to ſentence the capture as aforeſaid. But if the matter appears doubtful to the judge, &c. and it be found neceſſary to examine witneſſes remote from ſuch court of admiralty, and ſuch examination be deſired, and an abſolute determination inſiſted on, on both ſides, then the capture ſhall be appraiſed forthwith, by ſworn appraiſers, on the part of the captor; for which purpoſe the judge ſhall cauſe the goods found on board to be unladen and put in proper warehouſes, with ſeparate locks, of the collector and comptroller of the cuſtoms, and, where there is no comptroller, then of the naval officer, and the agents of the captors and claimants; at the charge of the parties deſiring the ſame, the claimants giving ſecurity within fourteen days after making ſuch claim, to pay the captors the full value appraiſed, if adjudged lawful prize; after which ſecurity, the judge ſhall order the ſaid prize to be delivered to the claimants, or their agents. 13 *Geo.* II. P. 134, 135.

And if the claimants refuſe to give ſecurity, the judge ſhall take ſecurity of the captors, to be approved by the claimants, to pay the claimants the appraiſed value, if it be adjudged not lawful prize; and the judge ſhall proceed thereupon to make an interlocutory order, for delivering the ſame to the captors or their agents.

All captures brought into any of our *American* colonies ſhall ſtay there without breaking bulk, under the joint care of the collector and comptroller of the cuſtoms; or where there is no comptroller, of the naval officer of that port, and the captors and their agents, till the ſame ſhall be cleared or condemned by final ſentence; and on condemnation as lawful prize, if taken by a privateer, ſhall be immediately delivered to the captors and their agents, ſubject to their own diſpoſal.

If any judges, or other officers in his majeſty's dominions abroad, neglect to perform any of the matters to them referred, relating to diſcharging or condemning the captures, as aforeſaid, ſhall forfeit 500l. &c. P. 136.

There ſhall not be paid above 10l. to all the judges and officers of any court of admiralty abroad, for the condemnation of any capture under 100 tons burthen, nor above 15l. if the capture be of that, or any greater burthen; and on payment of either of the ſaid ſums, the judges, &c. ſhall be liable to all the ſeveral penalties impoſed by this act, if they neglect to do their duties within the reſpective times limited.

If any captors or claimers ſhall not be ſatisfied with the ſentence given, in ſuch court of admiralty abroad, they may appeal to commiſſioners appointed under the great ſeal of *Great Britain*, for determining ſuch appeals; to be allowed as appeals to ſuch commiſſioners as are now allowed from the court of admiralty in *England*, if it be made within fourteen days after ſentence, and ſecurity given to proſecute with effect, and pay treble coſts if the ſentence be affirmed; provided the execution of any ſentence appealed from ſhall not be ſuſpended, if the parties appellate give ſecurity to the court who paſſed ſentence to reſtore the ſhip, &c. or the value, to the appellants, if the ſentence be reverſed.

Any commanders, officers, &c. who ſhall embezzle any part of the capture, ſhall forfeit treble the value of ſuch embezzlement, &c.

Provided that nothing in this act contained ſhall exempt any prizes from paying the uſual cuſtoms, or being ſubject to the laws in being, in any of his majeſty's dominions.

His majeſty, his heirs, &c. are impowered to grant charters, commiſſions, &c. in this or any future war, to enable any ſocieties or particular perſons to join in any adventures by ſea or land in *America*, to ſurprize, take, or deſtroy any moveables or immoveables belonging to the enemy, and to veſt the property of all things ſo taken in any parts of *America*, whether ſhips, goods, ſtores of war, ſettlements, factories, places of ſtrength, &c. together with all profits and advantages accruing from the ſame, in what manner and under ſuch regulations as his majeſty, his heirs, &c. ſhall think fit, and to confirm the ſaid benefits by any further grants. P. 139.

Provided

Provided that no charter, &c. ſhall reſtrain any of his majeſty's ſubjects from having a free trade to any part of *America*.

There ſhall be paid by the treaſurer of the navy, on bills made forth by the commiſſioners, to be paid according to courſe, without fee, to the officers, ſeamen, &c. that ſhall have been on board ſuch privateers, in any action where any ſhips of war or privateers ſhall be taken from the enemy, or deſtroyed, 5l. for every man which was living on board any ſhip ſo taken or deſtroyed, at the beginning of the engagement between them; the numbers to be proved by the oaths of three or more of the chief officers or men belonging to ſuch ſhips of the enemy, at the time of their being taken or deſtroyed, before the mayor, or other chief magiſtrate of the port whereto ſuch prize, or the men of any ſhip deſtroyed, ſhall be brought; which oaths the ſaid mayor, &c. is hereby required to adminiſter, and grant a certificate thereof, without fee, directed to the commiſſioners of the navy; upon producing which certificate, with an authentick copy of the condemnation of ſuch ſhip ſo taken, or if deſtroyed, on producing a certificate from the mayor, &c. the commiſſioners or their agents ſhall, within fifteen days, make out bills for the amount of ſuch bounty, directed to the treaſurer of the navy, payable to and to be divided among the owners, officers, &c. of any privateer, as by written agreement among themſelves ſhall be directed. 13 *Geo.* II. P. 140.

The bills made out for the bounty aforeſaid ſhall be payable to the agents of owners, &c. of privateers, to be divided as by written contract, &c. P. 141.

All captures, commonly called *Flota ſhips* or *Galleons*, or any regiſter ſhips, bound from *Buenos Ayres* or *Honduras*, or any goods on board the ſaid ſhips, ſhall be adjudged in his majeſty's high court of admiralty, and not by any court of admiralty out of *Great-Britain*.

If any ſhips, &c. belonging to his majeſty's ſubjects, ſhall be taken by the enemy, and afterwards retaken by any men of war, or privateers under his majeſty's protection, the ſaid ſhips, &c. ſo retaken, ſhall be reſtored to their proper owners, paying, in lieu of ſalvage, on eighth part of the value, after having been in poſſeſſion of the enemy twenty-four hours; and, if above twenty-four hours, and under forty-eight hours, a fifth part; and, if above forty-eight hours, and under ninety-ſix hours, a third part; and, if above ninety-ſix hours, a moiety thereof: All which payments ſhall be made without deduction; and if any ſhip ſo retaken ſhall appear to have been ſet forth by the enemy, while in their cuſtody, as a man of war, the owners of ſuch ſhip retaken ſhall pay a full moiety of the real value, without deduction. P. 142.

If any ſhip, &c. be taken by any privateer, through conſent or connivance, ſuch ſhip, &c. as alſo the tackle, apparel, furniture, and ammunition of ſuch privateer, ſhall be judged good prize; and the bond given by the captain ſhall be forfeited to his majeſty, &c.

No privateer, touching at any of the *American* plantations, ſhall carry from thence any ſervant without conſent of the owner, or any other perſon without his ticket of leave to depart, but in all caſes be ſubject to the laws of the country. P. 143.

For the encouragement of the officers and ſeamen of his majeſty's ſhips of war, and of all other *Britiſh* ſhips having commiſſions or letters of marque, and for inducing all *Britiſh* ſeamen who may be in any foreign ſervice to return into this kingdom, and become ſerviceable to his majeſty, and for the more effectually ſecuring and extending the trade of his majeſty's ſubjects, *it is enacted*, [the ſame as the preceding act entire, with the following additions, viz.] that all commanders of private ſhips of war, or merchant ſhips having letters of marque, ſhall, on going into any of thoſe ports or harbours, be ſubject to the ſeveral directions and forfeitures by ſuch laws made and provided. 17 *Geo.* II. P. 691, 692.

Some doubts having ariſen upon the conſtruction of ſeveral clauſes in the foregoing act of 13 *Geo.* II. *It is therefore enacted*, that, after the firſt day of *July*, 1744, all proceedings in any of his majeſty's courts of admiralty, concerning the adjudication and condemnation of prizes taken from the *Spaniards*, ſhall be according to the method directed and preſcribed by this preſent act. P. 705.

Nothing in this act contained ſhall reſtrain his majeſty, his heirs and ſucceſſors, from giving ſuch further rules and directions to his reſpective courts of admiralty, for the adjudication and condemnation of prizes, as by his majeſty, &c. with advice of his privy council, ſhall be thought neceſſary.

And

And as in all private ſhips of war, or merchant ſhips that ſhall take out letters of marque, it is expedient, for the better diſcipline and government of ſuch ſhips, that all perſons who ſhall enter themſelves on board ſhould be under proper regulations, to pay obedience to the lawful commands of the chief commanders of the ſaid ſhips: *It is therefore enacted*, that all offences committed by any officer or ſeamen on board any privateer or merchant ſhip, taking letters of marque, during the preſent war with *Spain* or *France*, ſhall be puniſhed in ſuch manner as the like offences are puniſhable on board his majeſty's ſhips of war.

All offenders who ſhall be accuſed of ſuch crimes as are cognizable only by a court-martial, ſhall be confined on board ſuch privateer, &c. in which ſuch offence ſhall be committed, until they ſhall arrive in ſome port in *Great Britain* or *Ireland*, or can meet with ſuch a number of his majeſty's ſhips of war abroad as are ſufficient to make a court martial; and, upon application made by the commander of ſuch privateer to the lord high admiral of *Great-Britain*, or the commander in chief of his majeſty's ſaid ſhips of war abroad, they are hereby authorized and required to call a court-martial, for trying and puniſhing the ſaid offences. 17 *Geo.* II. P. 706.

For advancement of the trade of *Great-Britain* to and in the ſeveral *Britiſh* ſugar colonies in the *Weſt Indies* in *America*, for the better encouragement of his majeſty's ſhips, and private ſhips of war, and the annoying and diminiſhing the power and wealth of his majeſty's enemies in thoſe parts, and for the increaſe of ſhipping and ſeamen; for theſe and other ſervices, *it is enacted*, that no mariner, or other perſon, who ſhall ſerve, or be retained to ſerve, on board any privateer, or trading veſſel that ſhall be employed in any of the *Britiſh* ſugar colonies in the *Weſt Indies* in *America*, &c. ſhall be impreſſed or taken away by any officer belonging to any of his majeſty's ſhips of war, unleſs ſuch mariner ſhall have before deſerted from ſuch ſhip of war, at any time after the 24th of *June*, 1746; upon pain that the officer ſo impreſſing, &c. contrary to the tenor and true meaning of this act, ſhall forfeit to the maſter or owner of ſuch veſſel, 5ol. for every man he ſhall take, with full coſts of ſuit, &c. 19 *Geo.* II. P. 487.

Every maſter or commander of a privateer, or trading veſſel, before he ſhall receive, in any of the parts aforeſaid, any ſeamen, &c. to ſerve on board, ſhall endeavour, by all the means he reaſonably can, to diſcover whether ſuch perſon hath deſerted from any man of war; and in caſe any commander ſhall receive any mariner on board, without firſt having made ſuch endeavour towards a diſcovery, or if he ſhall know ſuch a one to be a deſerter, he ſhall forfeit 5ol. for every man he ſhall ſo entertain, &c. P. 488.

And every maſter of a merchant ſhip or commander of a privateer, before he ſhall ſet ſail from any port belonging to any of the ſaid *Britiſh* ſugar colonies, ſhall deliver to the chief officer of the cuſtoms of the port he ſails from, an exact liſt of all the men belonging to ſuch veſſel, containing their names, ages, and deſcription of their perſons, upon pain of forfeiting 10l. for every man he ſhall receive on board, &c. P. 489.

Upon the death or alteration of any ſeaman the liſt muſt be altered, and ſhewn to the captains of men of war; and, in caſe any man belonging to his majeſty's ſhips of war ſhall be found on board, whoſe name is not in the liſt, the maſter or commander ſhall forfeit 5ol. for every ſuch man, &c.

The preamble ſets forth, that by the preceding act of 13 *Geo.* II. the ſole property of all veſſels and merchandize taken from the *Spaniards*, is given to the officers, &c. on board every privateer, being firſt adjudged lawful prize, and divers rules are therein eſtabliſhed for the condemnation of ſuch prizes; and by the ſaid act a bounty is given to the officers and ſeamen, on their taking or deſtroying the enemy's ſhips, and that by the foregoing act of 17 *Geo.* II. it was found neceſſary that the ſame encouragement ſhould be given to the captors of *French* ſhips, &c. 20 *Geo.* II. P. 591.

All ſales, bills of ſale, contracts, agreeents and aſſignments of ſhares of prizes, &c. taken from the enemy by ſhips of war, or having letters of marque, which ſhall be made at any time after the ſaid firſt of *June*, ſhall be void and of none effect. P. 592.

The agents are to pay the reſpective ſhares of prizes and bounty money to all ſeamen, &c. as ſhall appear in perſon, or, in their abſence, to their lawful attornies, impowered by them, in manner herein-after directed, or to their executors, &c. without any regard to bargain or ſale whatſoever, concerning the ſame. P. 596.

After

After the ſaid 1ſt of *June* no letter of attorney, made by any ſeaman, &c. in any ſhip of war, or having letters of marque, or by their executors, &c. in order to impower any perſon to receive any ſhare of prizes or bounty money, ſhall be valid, unleſs the ſame be made revocable, and for the uſe of ſuch ſeamen, and be ſigned and executed before, and atteſted by, the captain and one other of the ſigning officers of the ſhip, or the mayor or chief magiſtrate of ſome corporation.

As every war produces alterations, the following have been made ſince that which commenced in 1756.

If any captor or claimant ſhall not reſt ſatisfied with the ſentence given in the admiralty court abroad, the party aggrieved may appeal to the commiſſioners of appeals in cauſes of prizes in *Great-Britain*; the ſame to be allowed in like manner as appeals from the court of admiralty in this kingdom, ſo as the ſame be made within fourteen days after ſentence, and ſecurity be given to proſecute ſuch appeals, and anſwer the condemnation, and to pay treble coſts, in caſe the ſentence be affirmed. 27 *Geo.* II.

The execution of any ſentence ſhall not be ſuſpended by reaſon of ſuch appeal, in caſe the party appellate give ſecurity, to be approved of by the court, to reſtore the ſhip or effects, or the full value thereof, to the appellant, in caſe the ſentence ſhall be reverſed.

If any perſon, who was not a party in the firſt inſtance, ſhall interpoſe an appeal from a ſentence given in any admiralty-court, ſuch perſon or his agent ſhall at the ſame time enter his claim, otherwiſe ſuch appeals ſhall be null and void.

All appraiſements and ſales of ſhips or merchandizes, taken by his majeſty's ſhips of war, are to be made by agents, appointed in equal numbers by the flag-officers, captains, officers, ſhip's company, and others entitled thereunto, viz. If the flag officers, or flag officer, of any fleet or ſquadron, which ſhall take any prize, or the majority of ſuch flag officers, if more than one, ſhall appoint one or more agents to ſell or appraiſe the ſame, then the captains and commanders ſhall nominate the like number to act for them, and all the other officers ſhall appoint the like number to act for them; and all the crews of the ſeveral ſhips companies, entitled thereto, ſhall appoint the ſame number of agents to act on their belief.

But nothing herein is to extend to alter any agreement between the owners, officers, and ſeamen of privateers.

All agents for receiving the bounty for head-money are to exhibit and regiſter in the court of admiralty, where the prize ſhall be condemned, their letters of attorney appointing them agents; and if any agent ſhall refuſe or neglect ſo to do for ſix months after condemnation, he is to forfeit 500l. to be recovered by the proſecutor.

If any agent is appointed after condemnation, he muſt make the ſame regiſtry under the ſame penalty.

After the ſale of any prize taken by any of his majeſty's ſhips of war, publick notice is to be given by the agents of the day appointed for payment of the ſhares to the captors; after which, if any mens' ſhares ſhall remain in their hands, either belonging to ſuch men as ſhall be run from his majeſty's ſervice, or not be legally demanded in three years, the ſame are to go to the uſe of *Greenwich* Hoſpital.

If any veſſel ſhall be taken by colluſion by a man of war, the commander or captain ſhall forfeit 1000l. one moiety to the uſe of his majeſty, the other to the proſecutor; and he ſhall forfeit his employment, and be incapable of any office under his majeſty, during the ſpace of ſeven years; and the goods, ſhip, tackle, &c. ſo taken by colluſion, ſhall be adjudged good prize to his majeſty.

Perſons belonging to his majeſty's ſervice who ſhall run away from their ſhips before notification of the payment of prizes or bounty money, are not entitled to their ſhares; but the ſame ſhall go to *Greenwich* hoſpital.

And, if they run away after notification given, they forfeit ſuch part of their ſhares as ſhall remain in the agent's hands.

All agents, &c. who ſhall diſpoſe of any prize, are within three months after the day of the firſt payment to the captors, to tranſmit to the treaſurer of *Greenwich* hoſpital, &c. a true ſtate of the produce of ſuch prizes, together with an account of the payment of the ſeveral ſhares to the captors, as ſhall then have been made; and all perſons authorized to receive bounty bills are, in like manner, to tranſmit an account of the payment of the ſhares; and all agents, &c. who ſhall diſpoſe of any prizes taken by any of his majeſty's ſhips of war, or that ſhall have received or diſpoſed of any bills for bounty,

bounty, are, within three months after the term of three years, limited by this act, to make out an exact account of the produce of ſuch prize and bills for bounty; as alſo of the payments of the ſeveral ſhares to the captors, together with a true account upon oath, to be taken before the treaſurer of the ſaid hoſpital, &c. in writing under his hand and ſeal, of all ſums then remaining in their hands, which money and accounts they are at the ſame time to deliver, taking an acquittance for the ſame.

The perſons directed to deliver the accounts before-mentioned, and to pay the money within the time before limited and appointed, on neglect are to forfeit 100l. excluſive of the money then in their hands; one third to his majeſty, the other two thirds to the ſaid hoſpital, with coſts of ſuit.

If any fraud ſhall appear in the accounts, every perſon, his aiders and abettors, are to forfeit 100l. over and above the aforeſaid penalties; one third to his majeſty, one-third to the hoſpital, and the other to the informer, with coſts of ſuit.

No agent may be ſued by any perſon who ſhall make a run from his majeſty's ſervice, in the liſts certified of the names of the officers, ſeamen, &c. actually on board any of his majeſty's ſhips of war, at the taking of any prize, until the end of three months after the expiration of the three years limited for the claiming of prizes and bounty money, unleſs ſuch perſon ſhall, before any action brought, obtain a certificate of his R being taken off, and the forfeiture of his ſhare of ſuch prize and bounty money diſcharged by the commiſſioners of the navy, who ſubſcribed the ſaid liſts, and ſhall produce ſuch certificates to the agents, and unleſs the agent ſhall refuſe thereupon to pay the ſaid prize and bounty money within two months after ſuch demand and certificate produced.

The preamble ſets forth, that repeated complaints having been made of piracy and robbery being committed on board ſmall ſhips and boats being, or pretending to be, *Engliſh* privateers; and that it is apprehended that moſt of the acts of piracy and robbery have ariſen from the obligation on the lords of the admiralty, to grant commiſſions to all commanders of ſhips or veſſels of what burden ſoever, without diſtinction: To remedy which inconveniency it is enacted, that ſuch commiſſions ſhall be abſolutely repealed and made void. 32 *Geo.* II.

But it is further enacted, that from and after the firſt of *June*, 1759, commiſſions ſhall be iſſued at the requeſt of any owner or owners, they giving ſuch ſecurity as is herein-after mentioned; and that ſhall ſhips, veſſels, goods, &c. taken by any ſuch privateer, being firſt adjudged lawful prize, ſhall wholly belong to the owners and captors, in ſuch manner as ſhall be agreed on among themſelves, and neither to his majeſty, or any admiral, vice-admiral, governor, or other perſon whatſoever; except as to the cuſtoms and duties.

No commiſſion ſhall be granted, if in *Europe*, except the veſſel be of 100 tons burden, carrying ten carriage guns, being three pounders, and forty men at leaſt; or unleſs the lords of the admiralty, or perſons authorized by them, ſhall think fit to grant the ſame to any veſſel of inferior force or burden.

The lords of the admiralty may at any time, by an order in writing, revoke any commiſſion.

In ſuch caſe the ſecretary of the admiralty is required with all convenient ſpeed, after any commiſſion ſhall be ſo revoked, to give notice in writing to the owners, agents, or ſureties of the ſhip or veſſel, named in ſuch order of revocation: And, if ſuch ſhip ſhall be in the channel, the order of revocation ſhall be effectual to ſuperſede the ſaid commiſſion, at the expiration of twenty days from ſuch notice, or ſooner, if the notice ſhall be given to the commander of the veſſel: If ſhe ſhall be in the northern ſeas, at the expiration of twenty days; and if to the ſouthward of Cape *Finiſterre*, or in the *Mediterranean* at the end of ſix weeks: If in *North America* or the *Weſt Indies*, at the expiration of three months; and in the *Eaſt Indies*, at the end of ſix months: And the perſon concerned may complain of ſuch revocation to his majeſty in council, within thirty days after the notice is given, and the determination of his majeſty in council ſhall be final.

If the order of revocation ſhall be ſuperſeded, the commiſſion ſhall be deemed to have continued in force, in the ſame manner as if no ſuch revocation had been made.

No

No perſon ſhall be liable to be puniſhed for doing any matter or thing before he ſhall have received perſonal notice of ſuch revocation.

Before the granting any commiſſion, uſual bail or ſecurity ſhall be taken, each perſon, being ſecurity, making oath before the judge of the admiralty, &c. that at the time of their being ſworn, they were worth more money than the ſum for which they are then bound, excluſive of their juſt debts; And the marſhal of the court, &c. is directed to make enquiry of the ſufficiency of ſuch ſecurity, and report the ſame to the judge or his ſurrogate, before ſuch commiſſion ſhall be granted.

All perſons applying for commiſſions are to make application in writing, and ſet forth therein a particular and exact deſcription of the ſhip or veſſel, ſpecifying the burden, and the number and the nature of the guns on board, to what place belonging, and the names of the principal owners, and the number of the men, all which particulars are to be inſerted in the commiſſion, and every commander ſhall produce ſuch commiſſion to the collector, &c. of the port from whence ſuch ſhip or veſſel ſhall be firſt fitted out, or to the lawful deputy of ſuch collectors, &c. who are required to inſpect the ſaid ſhip, without fee or reward, ſo as to aſcertain the burden, number of men, and number and nature of her guns: And if they ſhall find the ſame to anſwer the tenour of the deſcription in the commiſſion, or be of greater force, they are immediately, upon the requeſt of the commander, to give him a certificate *gratis*, which ſhall be deemed a neceſſary clearance, before ſuch veſſel ſhall be permitted to ſail from that port: And if the commander ſhall depart without ſuch certificate, or proceed upon a cruiſe with a force inferior to that mentioned in his commiſſion, or required by this act, the commiſſion ſhall from thenceforth be null and void; and the commander, being convicted before any court of admiralty, ſhall be impriſoned without bail or mainprize, for ſuch ſpace as the court ſhall direct, not exceeding one year.

If any collector, &c. ſhall grant a certificate for any veſſel which ſhall not be of the burden and force ſpecified in the commiſſion, or of greater burden and force than ſhall be mentioned therein, he ſhall forfeit his office, and be for ever after incapable of holding any office in the cuſtoms; and ſhall alſo forfeit 100l. one half to the informer, and the other to the corporation for the relief of ſick and diſabled ſeamen in the merchant-ſervice; or, if the forfeiture ſhall be incurred in an out-port, where there is a corporation for relief of ſeamen, then to the truſtees of ſuch corporation.

The tonnage of veſſels to be aſcertained according to the rules laid down by the act 8 *Anne, for making a dock at* Liverpool.

If the commander of any private ſhip of war ſhall agree to ranſom any neutral veſſel, or the cargo, or any part thereof, after the ſame ſhall have been taken as prize, and, in purſuance of ſuch agreement, diſcharge ſuch prize without bringing the ſame into ſome port belonging to his majeſty's dominions, he ſhall be deemed guilty of piracy, felony, and robbery; and upon conviction ſhall ſuffer pains of death, loſs of lands, goods, and chattels accordingly.

But the commander of any private ſhip of war, upon the capture of any neutral ſhip, which ſhall be liable only to the forfeiture of ſuch contraband goods as ſhall be on board, may receive ſuch goods from ſuch ſhip, in caſe the commander thereof is willing to deliver the ſame, and may thereupon ſet ſuch neutral ſhip at liberty; and if any perſon ſhall purloin or embezzle any contraband goods before condemnation, he ſhall ſuffer ſuch pains and penalties as are inflicted by law on perſons purloining or embezzling goods out of any captured ſhip.

All books, papers, and writings, found in any veſſel, taken as prize, ſhall be brought into the regiſtry of the court of admiralty, wherein ſuch veſſel may be proceeded againſt in order for condemnation; but ſuch only tranſlated as ſhall be agreed or inſiſted upon by the proctors of the ſeveral parties, captors or claimants, or, in caſe of no claim by the captor or regiſtry, to be neceſſary for aſcertaining the property of ſuch veſſel and her cargo.

No judge, regiſter, or deputy regiſter, marſhal or deputy marſhal, or any other officer belonging to any court of admiralty or vice admiralty in *Great Britain* or *Ireland*, or the plantations or elſewhere, or any advocate or proctor ſhall be concerned in any privateer, having commiſſion aforeſaid; on penalty of forfeiting their office and alſo 100l.

to

to his majeſty; and every advocate or proctor to be rendered incapable of practiſing for the future.

No regiſter, or deputy regiſter, nor any marſhal nor deputy marſhal, of any admiralty or vice admiralty court, ſhall act or be concerned, either directly or indirectly, as advocate or proctor in ſuch courts, to which they belong; or, on non-obſervance of this clauſe, ſhall forfeit his reſpective office and employment in ſuch court.

If any appeal ſhall be interpoſed from a ſentence given in an admiralty court in purſuance of the act 29 *Geo.* II. the judge of ſuch court ſhall, at the requeſt and charge, either of the captor or claimant, or of the claimant only, in caſe where the privilege is reſerved in favour of the claimant by any treaty now ſubſiſting, make an order to have ſuch capture appraiſed, unleſs the parties agree upon the value, and an inventory taken, and then take ſecurity for the full value thereof, and cauſe ſuch capture to be delivered to the party giving ſuch ſecurity, in the ſame manner as, by the former act, ſuch judge ought or could have done before ſentence given, notwithſtanding ſuch appeal; and if there ſhall be any difficulty or objection to the giving or taking ſecurity, the judge ſhall, at the requeſt of either of the parties, order ſuch goods and effects to be entered, landed, and ſold by public auction, as prize-goods now are, under the care and cuſtody of the officers of the cuſtoms, and under the direction and inſpection of ſuch perſons as ſhall be appointed by the claimants and captors; the produce to be depoſited in the bank of *England*, or in ſome public ſecurities, in the names of ſuch truſtees as the captors and claimants ſhall appoint, and the court ſhall approve, for the uſe and benefit of the parties who ſhall be adjudged to be entitled thereto; and, if ſuch ſecurity ſhall be given by the claimants, then the judge ſhall give ſuch capture a paſs, to prevent its being taken again by his majeſty's ſubjects in its deſtined voyage.

This act to continue in force during the preſent war with *France*, and no longer.

The expence at the admiralty office of a letter of marque, or a commiſſion, is 1l. 2s. 6d. and at the commons 9l. 14s. 6d. but proctors, when employed, generally charge fifteen guineas.

An ORDER *from the Lords of the Admiralty to the Judge of the High Court of Admiralty, to make out the Commiſſion.*

By the Commiſſioners for executing the Office of Lord High Admiral of Great Britain *and* Ireland, *&c.*

WHEREAS by his majeſty's commiſſion under the great ſeal of *Great Britain*, bearing date the We are required and authorized to iſſue forth and grant commiſſions to any of his majeſty's ſubjects, or others, whom we ſhall deem fitly qualified in that behalf, for the apprehending, ſeizing and taking the ſhips, veſſels, and goods belonging to or the vaſſals and ſubjects of the king, or other inhabiting within any of his countries, territories and dominions, and ſuch other ſhips, veſſels, and goods as are or ſhall be liable to confiſcation, purſuant to the reſpective treaties between his majeſty and other princes, ſtates, and potentates, and to bring the ſame to judgment in his majeſty's high court of admiralty of *England*, or ſuch other court of admiralty as ſhall be lawfully authorized in that behalf, for proceedings and adjudication, and condemnation to be thereupon had, according to the courſe of admiralty and law of nations, with other powers in the ſaid commiſſion expreſſed; a copy whereof together with his majeſty's inſtructions under his royal ſignet and ſign manual, remains with you: THESE are therefore to will and require you forthwith to cauſe a commiſſion, or letter of marque, to be iſſued out of the high court of admiralty unto commander of the ſhip called the burden about tons, mounted with guns, and navigated with men; to ſet forth, in warlike manner, the ſaid ſhip called the whereof the ſaid is commander, and to apprehend, ſeize, and take the ſhips, veſſels, and goods belonging to or the

the vaſſals and ſubjects of the king, or others inhabiting within any of his countries, territories and dominions, and ſuch other ſhips, veſſels, and goods as are or ſhall be liable to confiſcation, purſuant to the reſpective treaties between his majeſty and other princes, ſtates, and potentates, according to his majeſty's commiſſion and inſtructions aforeſaid. And you are to inſert therein a clauſe, injoining the ſaid to keep an exact journal of his proceedings; and therein particularly to take notice of all prizes which ſhall be taken by him, the nature of ſuch prizes, the time and place of their being taken, and the value of them as near as he can judge; as alſo the ſtation, motion and ſtrength of the enemy, as well as he can diſcover by the beſt intelligence he can get; of which he is, from time to time, as he ſhall have opportunity, to tranſmit an account to our ſecretary, and to keep correſpondence with him by all opportunities that ſhall preſent. PROVIDED always, that, before you iſſue ſuch commiſſion, ſecurity be given thereupon, according as is directed by his majeſty's inſtructions aforementioned, and hath been uſed in ſuch caſes. The ſaid commiſſion to continue in force until further order: For which this ſhall be your warrant. Given under our hands, and the ſeal of the office of admiralty, this day of 17

To
Judge of the high court of admiralty.

By command of their lordſhips.

The COMMISSION.

GEORGE the ſecond, by the grace of God king of *Great Britain*, *France*, and *Ireland*, defender of the faith; TO ALL PEOPLE to whom theſe preſents ſhall come, greeting: WHEREAS WE, by our declaration of the nineteenth day of *October*, in the year of our Lord *one thouſand ſeven hundred and thirty-nine*, for the reaſons therein contained, have declared war againſt *Spain*; AND WHEREAS WE, by our declaration of the twenty ninth day of *March*, in the year of our Lord *one thouſand ſeven hundred and forty-four*, for the reaſons therein contained, have declared war againſt *France*. AND WHEREAS WE, by our commiſſion under our great ſeal of *Great Britain*, bearing date the eighteenth day of *June* following, have willed, required, and authorized our high admiral of *Great-Britain*, and *Ireland*, &c. for the time being, and our commiſſioners for executing the office of our high admiral of *Great Britain* and *Ireland*, &c. and the commiſſioners for executing the ſaid office, for the time being, or any three or more of them, to iſſue forth and grant commiſſions to any of our loving ſubjects, or others, whom our high admiral aforeſaid, or our ſaid commiſſioners for executing the ſaid office, and the commiſſioners for executing the ſame for the time being, ſhall deem fitly qualified in that behalf, for the apprehending, ſeizing, and taking the ſhips, veſſels, and goods belonging to *France* and *Spain*, or the vaſſals and ſubjects of the *French* king or king of *Spain*, or either of them, or others inhabiting within any of their or either of their countries, territories, and dominions, and ſuch other ſhips, veſſels, and goods as are or ſhall be liable to confiſcation, purſuant to the reſpective treaties between us and other princes, ſtates, and potentates, and to bring the ſame to judgment in our high court of admiralty of *England*, or ſuch other court of admiralty as ſhall be lawfully authorized in that behalf for proceedings and adjudications, and condemnation to be thereupon had, according to the courſe of admiralty and laws of nations, and with ſuch clauſes to be therein inſerted, and in ſuch manner, as by our ſaid commiſſion more at large appeareth. AND WHEREAS our ſaid commiſſioners for executing the office of our high admiral aforeſaid, have thought fitly qualified, who hath equipped, furniſhed, and victualled a ſhip called of the burthen of about tons, whereof he the ſaid is commander. AND WHEREAS the ſaid hath given ſufficient bail, with ſureties, to us in our ſaid high court

of admiralty, according to the effect and form ſet down in our inſtructions made the ſaid eighteenth day of *June*, *one thouſand ſeven hundred and forty-four*, and in the eighteenth year of our reign, a copy whereof is given to the ſaid captain KNOW YE THEREFORE, that We do by theſe preſents grant commiſſion to, and do licence and authorize the ſaid to ſet forth in warlike manner the ſaid ſhip called the under his own command; and therewith, by force of arms, to apprehend, ſeize, and take the ſhips, veſſels, and goods belonging to *France* and *Spain*, or the vaſſals and ſubjects of the *French* king or king of *Spain*, or either of them, or others inhabiting within any of their or either of their countries, territories, and dominions, and ſuch other ſhips, veſſels, and goods, as are or ſhall be liable to confiſcation, purſuant to the reſpective treaties between us and other princes, ſtates, and potentates, and to bring the ſame to ſuch ports as ſhall be moſt convenient in order to have them legally adjudged in our ſaid high court of admiralty of *England*, or before the judges of ſuch other admiralty court as ſhall be lawfully authorized within our dominions; which being condemned, it ſhall and may be lawful for the ſaid to ſell and diſpoſe of ſuch ſhips, veſſels, and goods, ſo adjudged and condemned in ſuch ſort or manner as by the courſe of admiralty hath been accuſtomed, except in ſuch caſes where it is otherwiſe directed by our ſaid inſtructions. PROVIDED always, that the ſaid keep an exact journal of his proceedings, and therein particularly take notice of all prizes which ſhall be taken by him, the nature of ſuch prizes, the times and places of their being taken, and the values of them, as near as he can judge; as alſo of the ſtation, motion, and ſtrength of the enemies, as well as he or his mariners can diſcover by the beſt intelligence he can get, and alſo of whatſoever elſe ſhall occur unto him, or any of his officers or mariners, or be diſcovered or diſcloſed unto him or them, or found out by examination or conference with any mariners or paſſengers of, or in, any of the ſhips or veſſels taken, or by any other perſon or perſons, or by any other ways and means whatſoever, touching or concerning the deſigns of the enemies, or any of their fleets, veſſels, or parties, and of their ſtations, ports, and places, and of their intents therein, and of what merchant ſhips or veſſels of the enemies bound out or home, or to any other place, he or his officers or mariners ſhall hear of, and of what elſe material in thoſe caſes may arrive to his or their knowledge; of all which he ſhall, from time to time, as he ſhall or may have opportunity, tranſmit an account to our high admiral of *Great Britain* for the time being, or our ſaid commiſſioners for executing the office of our high admiral aforeſaid, or the commiſſioners for executing that office for the time being, or their ſecretary, and keep a correſpondence with him or them by all opportunities that ſhall preſent. AND FURTHR PROVIDED, that nothing be done by the ſaid or any of his officers, mariners, and company, contrary to the true meaning of our aforeſaid inſtructions, but that the ſaid inſtructions ſhall be by them, and each and every of them, as far as they or any of them are therein concerned, in all particulars well and duly performed and obſerved. AND WE pray and deſire all kings, princes, potentates, eſtates, and republicks, being our friends and allies, and all others to whom it ſhall appertain, to give the ſaid all aid, aſſiſtance, and ſuccour, in their ports, with his ſaid ſhip, company and prizes, without doing or ſuffering to be done to him any wrong, trouble, or hindrance; We offering to do the like when we ſhall be by them thereunto deſired. AND WE will and require all our officers whatſoever, to give him ſuccour and aſſiſtance as occaſion ſhall require. IN WITNESS whereof we have cauſed the great ſeal of our high court of admiralty of *England* to be hereunto affixed. Given at *London* the day of in the year of our Lord *one thouſand ſeven hundred and forty-four*, and in the eighteenth year of our reign.

Extract

Extract from the Regiſtry of the High Court of Admiralty of *England*.

GEORGE R.

INSTRUCTIONS *for the commanders of ſuch merchant ſhips and veſſels as may have letters of marque, or commiſſions for private men of war againſt the king of* Spain, *his vaſſals and ſubjects, or others inhabiting within any of his countries, territories, or dominions, by virtue of our commiſſion granted under the great ſeal of* Great Britain, *bearing date the thirtieth day of* November, 1739. *Given at our court at* St. James's, *the thirtieth day of* November, 1739, *in the thirteenth year of our reign.*

I. THAT it ſhall be lawful for the ſaid commanders of merchant ſhips and veſſels authorized by letters of marque, or commiſſions for private men of war, to ſet upon by force of arms, and ſubdue and take the men of war, ſhips, and other veſſels whatſoever, as alſo the goods, monies, and merchandizes belonging to the king of *Spain*, his vaſſals and ſubjects, and others inhabiting within any of his countries, territories, and dominions; and ſuch other ſhips, veſſels, and goods, as are, or ſhall be, liable to confiſcation, purſuant to the treaties between us and other princes, ſtates, and potentates: But ſo as that no hoſtility be committed, nor prize attacked, ſeized, or taken, within the harbours of princes and ſtates in amity with us, or in their rivers or roads, within ſhot of their cannon.

II. That all ſhips, of what nation ſoever, carrying any ſoldiers, arms, powder, ammunition, or any other contraband goods, to any of the territories, lands, plantations, or countries of the king of *Spain*, ſhall be ſeized as prizes.

III. That the ſaid commanders of ſuch merchant ſhips and veſſels ſhall bring ſuch ſhips and goods as they have ſeized, or ſhall ſo ſeize and take, to ſuch port of this our realm of *England*, or ſome other port of our dominions as ſhall be moſt convenient for them, in order to have the ſame legally adjudged in our high court of admiralty of *England*, or before the judges of ſuch other admiralty court, as ſhall be lawfully authorized within our dominions: But if ſuch prize be taken in the *Mediterranean*, or within the *Straits* of *Gibraltar*, then the captor may, if he doth not think fit to bring the ſame to ſome port of *England*, or other our dominions, carry ſuch ſhip and goods into the ports of ſuch princes or ſtates as are in alliance or amity with us.

IV. That after ſuch ſhip ſhall be taken and brought into any port, the taker ſhall be obliged to bring or ſend, as ſoon as poſſible may be, three or four of the principal of the company, whereof the maſter and the pilot to be always two, of every ſhip ſo brought into port, before the judge of the admiralty of *England*, or his ſurrogate, or before the judge of ſuch other admiralty court, within our dominions, as ſhall be lawfully authorized as aforeſaid, or ſuch as ſhall be lawfully commiſſioned in that behalf, to be ſworn and examined upon ſuch interrogatories as ſhall tend to the diſcovery of the truth, touching the intereſt or property of ſuch ſhip or ſhips, and of the goods and merchandizes found therein: And the taker ſhall be further obliged at the time he produceth the company to be examined, to bring and deliver into the hands of the judge of the admiralty of *England*, his ſurrogate, or the judge of ſuch other admiralty courts within our dominions, as ſhall be lawfully authorized, or others commiſſioned as aforeſaid, all ſuch paſſes, ſea-briefs, charter-parties, bills of lading, cockets, letters, and other documents and writings as ſhall be delivered up, or found on board any ſuch ſhips; the ſaid taker or one of his chief officers, who was preſent and ſaw the ſaid papers and writings delivered up, or otherwiſe found on board at the time of the capture, making oath, that the ſaid papers and writings are brought and delivered in, as they were received or taken, without any fraud, addition, ſubduction or embezzlement

V. That

V. That ſuch ſhips, goods, and merchandizes, taken by virtue of letters of marque, or commiſſions for private men of war, ſhall be kept and preſerved, and no part of them ſhall be ſold, ſpoiled, waſted, or diminiſhed, and that the bulk thereof ſhall not be broken before judgment be given in the high court of admiralty of *England*, or ſome other court of admiralty lawfully authorized in that behalf, that the ſhips, goods, and merchandizes are lawful prize; and that no perſon or perſons, taken or ſurprized in any ſhip or veſſel as aforeſaid, though known to be of the enemy's party, ſhall be in cold blood killed, maimed, or by torture or cruelty inhumanly treated, contrary to the common uſage and juſt permiſſion of war; and whoſoever ſhall offend in any of the premiſes, ſhall be ſeverely puniſhed.

VI. That the ſaid commanders of ſuch merchant ſhips and veſſels, who ſhall obtain the ſaid letters of marque or commiſſions, as aforeſaid, for private men of war, ſhall not do or attempt any thing againſt the true meaning of any article or articles, treaty or treaties, depending between us and any of our allies, touching the freedom of commerce in the time of war, and the authority of the paſſports, or certificates under a certain form in ſome one of the articles or treaties ſo depending between us and our allies, as aforeſaid, when produced and ſhewed by any of the ſubjects of our ſaid allies; and ſhall not do or attempt any thing againſt our loving ſubjects, or the ſubjects of any prince or ſtate in amity with us, nor againſt their ſhips, veſſels or goods, but only againſt the king of *Spain*, his vaſſals and ſubjects, and others inhabiting within his countries, territories, or dominions, their ſhips, veſſels and goods, except as before excepted: and againſt ſuch other ſhips, veſſels and goods, as are or ſhall be liable to confiſcation.

VII. That after condemnation of any prize, it ſhall or may be lawful for the commanders of ſuch merchant ſhips or veſſels, or the owners of the ſame, to keep ſuch and ſo many ſhips, veſſels, goods, and merchandizes as ſhall be condemned to them, for lawful prize, in their own poſſeſſion; to make ſale or diſpoſe thereof in open market, or otherwiſe, to their beſt advantage, in as ample manner as at any time heretofore has been accuſtomed in caſes of letters of marque, or of juſt prizes in time of war; other than wrought ſilks, Bengals, and ſtuffs mixed with ſilk or herba, of the manufacture of *Perſia*, *China*, or *Eaſt India*, or callicoes painted, dyed, printed or ſtained there, which are to be depoſited for exportation, according to the directions of an act made in the eleventh year of the reign of the late king *William*,, entituled, *An act for the more effectual employing the poor by encouraging the manufactures of this kingdom:* And that it ſhall be lawful for all manner of perſons as well our ſubjects as others, according to law, to buy the ſaid ſhips, veſſels, goods, and merchandizes, ſo taken and condemned for lawful prize, without any damage or moleſtation to enſue thereupon to the ſaid buyers, or any of them, by reaſon of the contracting or dealing for the ſame.

VIII. That if any ſhip or veſſel, belonging to us or our ſubjects, or to our allies or their ſubjects, ſhall be found in diſtreſs, by being, in fight, ſet upon or taken by the enemy, the captain, officers, and company, who ſhall have ſuch letters of marque or commiſſion as aforeſaid, ſhall uſe their beſt endeavours to give aid and ſuccour to all ſuch ſhip or ſhips, and ſhall, to the utmoſt of their power, labour to free the ſame from the enemy.

IX. That our ſubjects, and all other perſons whatſoever, who ſhall either in their own perſons ſerve, or bear any charge, or adventure, or in any ſort further or ſet forward the ſaid adventure, according to theſe articles, ſhall ſtand and be freed by virtue of the ſaid commiſſion; and that no perſon be in any wiſe reputed or challenged for an offender againſt our laws, but ſhall be freed, under our protection, of and from all trouble and vexation that might in any wiſe grow thereby, in the ſame manner as any other our ſubjects ought to be by law, in their aiding and aſſiſting us; either in their own perſons, or otherwiſe, in a lawful w[illegible] our declared enemies.

X. That the ſaid commanders of ſuch [illegible]t ſhips and veſſels, or their owners or agents, before the taking out commiſſions, ſhall give notice in writing, ſubſcribed with their hands, to our high admiral of *Great Britain*, for the time being, or our commiſſioners for executing the office of our high admiral, or the commiſſioners for executing that office for the time being, or the lieutenant or judge of the ſaid high court of admiralty, or his ſurrogate, of the name of their ſhip, and of the tonnage and burthen, and the names of the captain, owners, or ſetters out of the ſaid ſhip, with the number of men,

men, and the names of the officers in her, and for what time they are victualled, and alſo of their ordnance, furniture, and ammunition, to the end the ſame may be regiſtered in the ſaid court of admiralty.

XI. That thoſe commanders of ſuch merchant ſhips and veſſels, who ſhall have ſuch letters of marque, or commiſſions as aforeſaid, ſhall hold and keep, and are hereby enjoined to hold and keep, a correſpondence, by all conveniences, and upon all occaſions, from time to time, with our high admiral of *Great Britain* for the time being, or our commiſſioners for executing the office of our high admiral, or the commiſſioners for executing that office for the time being, or their ſecretary, ſo as, from time to time, to render and give unto him or them, not only an account or intelligence of their captures or proceedings, by virtue of ſuch their ſaid letters of marque, or commiſſions, as aforeſaid; but alſo, of whatſoever elſe ſhall occur unto them, or be diſcovered and declared unto them, or found out by them, by examination of, or conference with, any mariners, or paſſengers of or in the ſhips or veſſels taken, or by any other ways or means whatſoever, touching or concerning the deſigns of the enemy, or any of their fleets, ſhips, veſſels, or parties; and of the ſtations, ſeas, ports, and places, and of their intents therein; and of what merchant ſhips or veſſels of the enemy, bound out or home, they ſhall hear of; and of what elſe material in theſe caſes may arrive to their knowledge, to the end ſuch courſe may be thereupon taken, and ſuch orders given, as may be requiſite.

XII. That no commander of a merchant ſhip, or veſſel, who ſhall have a letter of marque or commiſſion as aforeſaid, ſhall preſume, as they will anſwer it at their peril, to wear any jack, pendant, or any other enſign or colour uſually borne by our ſhips; but that, beſides the colours bore uſually by merchant ſhips, they do wear a red jack with the union-jack, deſcribed in the canton at the upper corner thereof near the ſtaff; and that one-third part of the whole company of every ſuch ſhip or veſſel ſo fitted out as aforeſaid, ſhall be land-men.

XIII. That ſuch commanders of merchant ſhips and veſſels who ſhall obtain ſuch letters of marque or commiſſions, as aforeſaid, ſhall alſo, from time to time, upon due notice being given them, obſerve all ſuch other inſtructions and orders as we ſhall think fit to direct, for the better carrying on of this ſervice.

XIV. That all perſons who ſhall violate theſe inſtructions ſhall be ſeverely puniſhed, and alſo required to make full reparation to perſons injured, contrary to theſe inſtructions, for all damages they ſhall ſuſtain by any capture, embezzlement, demurrage, or otherwiſe.

XV. That before any ſuch letters of marque, or commiſſions, iſſued under ſeal, bail, with ſureties; ſhall be given before the lieutenant and judge of our high court of admiralty of *England*, or his ſurrogate, in the ſum of three thouſand pounds ſterling, if the ſhip carries above one hundred and fifty men: and, if a leſſer number, in the ſum of fifteen hundred pounds ſterling: Which bail ſhall be to the effect, and in the form following:

WHICH day, time, and place perſonally appeared

who ſubmitting themſelves to the juriſdiction of the high court of admiralty of *England*, obliged themſelves, their heirs, executors, and adminiſtrators, to our ſovereign lord the king, in the ſum of pounds of lawful money of *Great Britain*, to this effect; that is to ſay, That whereas is authorized by letters of marque, or a commiſſion for a private man of war, to arm, equip, and ſet forth to ſea, the ſhip called the of the burthen of about tons, whereof he the ſaid goeth captain, with men, ordnance, ammunition and victuals, to ſet upon by force of arms, and to ſubdue, ſeize, and take the men of war, ſhips, and other veſſels whatſoever, together with the

the goods, monies, and merchandizes belonging to the king of *Spain*, or to any of his vaſſals and ſubjects, or others inhabiting within any of his countries, territories, or dominions whatſoever, and ſuch other ſhips, veſſels, and goods as are or ſhall be liable to confiſcation, excepting only within the harbours or roads within ſhot of the cannon of princes and ſtates in amity with his majeſty: And whereas he, the ſaid has a copy of certain inſtructions, approved of and paſſed by his majeſty in council, delivered to him to govern himſelf therein, as by the tenor of the ſaid commiſſion, and of the inſtructions thereto relating, more at large appeareth: If, thereof, nothing be done by the ſaid or any of his officers, mariners, or company, contrary to the true meaning of the ſaid inſtructions, but that the commiſſion aforeſaid, and the ſaid inſtructions, ſhall in all particulars be well and duly performed and obſerved, as far as they ſhall the ſaid ſhip, captain, and company any way concern; and they or any of them, ſhall give full ſatisfaction for any damages or injury which ſhall be done by them, or any of them, to any of his majeſty's ſubjects or allies, or neuters, or their ſubjects; and alſo ſhall duly and truly pay, or cauſe to be paid, to his majeſty, or the cuſtomers or officers appointed to receive the ſame for his majeſty, the uſual cuſtoms due to his majeſty, of and for all ſhips and goods, ſo as aforeſaid taken and adjudged for prize; and moreover, if the ſaid ſhall not take any ſhip or veſſel, or any goods and merchandizes, belonging to the enemy, or otherwiſe liable to confiſcation through conſent, or clandeſtinely, or by colluſion, by virtue, colour, or pretence of this ſaid commiſſion, that then this bail ſhall be void, and of none effect: And unleſs they ſhall ſo do, they do all hereby ſeverally conſent that execution ſhall iſſue forth againſt them, their heirs, executors, and adminiſtrators, goods and chattels, whereſoever the ſame ſhall be found, to the value of the ſaid ſum of pounds, before-mentioned. And in teſtimony of the truth thereof they have hereunto ſubſcribed their names.

By his Majeſty's Command.

HARRINGTON.

Exam. S. HILL, Regiſter.

An ADDITIONAL INSTRUCTION *to all ſuch as have or ſhall have letters of marque, or commiſſions for private men of war, in purſuance of a warrant from his majeſty, dated the ſeventh day of* April, 1743, *directed to the commiſſioners for executing the office of lord high admiral of* Great Britain *and* Ireland, *&c. and of a warrant in purſuance thereupon, made by the right honourable the lords commiſſioners for executing the office of lord high admiral of* Great Britain *and* Ireland, *&c. dated the ninth day of* April, 1743, *directed to Sir* Henry Penrice, *knight, judge of the high court of admiralty of* England.

THAT all captains and commanders of ſhips, who have or ſhall have letters of marque, or commiſſions for private men of war, are hereby required and enjoined to obſerve carefully and religiouſly the terms of the treaty marine, between his late majeſty king *CHARLES* the ſecond and their high mightineſſes the States General of the United *Netherlands*, concluded at *London* the firſt of *December*, 1674, old ſtyle, and confirmed by ſubſequent treaties: And they are hereby required to give ſecurity, purſuant to the tenth article of the aforeſaid treaty marine, for the due performance thereof.

Exam. SAMUEL HILL, Regiſter.

The

The following are ſuch articles of agreement as were commonly entered into by the captains of privateers, in the late war, and their crews; which I publiſh as a copy for my readers to have recourſe to, in caſes wherein future ruptures may render them uſeful, viz.

ARTICLES agreed between captain *A. B.* commander of the *private man of war*, called the *Terrible*, with *twenty guns* mounted, carrying *nine pound* ſhot, *twenty braſs pattereroes*, *four mortars*, and ſome *wall-pieces*, manned with *two hundred men*, now lying at *Church-Hole*, deſigned to cruize againſt the *French* and *Spaniards*, on the one part; and the ſaid ſhip's company on the other, *witneſſeth:*

1. That the ſaid captain *A. B.* for himſelf, and in behalf of the owners of the ſaid ſhip *Terrible*, ſhall put on board her great guns, ſwivels, powder, ſhot, and all other warlike ammunition neceſſary for them; as alſo ſmall arms, and proviſion ſufficient for the ſaid ſhip's company for a ſix months' cruize at ſea, from their ſailing from the *Downs*; in conſideration of which, the owners or their aſſigns ſhall be reimburſed, out of the firſt prize or prizes taken by the ſaid ſhip *Terrible*, before any dividend is made thereof, the whole charge of warlike ſtores, great guns and ſmall arms excepted, victualling, advance-money, and the expences the owners are at for the ſurgeon's cheſt, and a ſet of muſick; after which one-half of the nett proceeds of ſuch prize or prizes as ſhall be taken, to be for the account of the owners, and at the diſpoſition of the managers; and the other half of ſuch nett proceeds to be the ſole property of the ſhip's company, the captains ſhare of which to be 6 [*in ſome* 8] *per cent.* and the reſidue to be divided in the proportions mentioned in the eleventh article of theſe preſents.

2. That, for preſerving decorum on board the ſaid private man of war, no man is to quit, or go out of her, on board of any other veſſel or veſſels, or on ſhore, without leave obtained of the commanding officer on board, under the penalty of ſuch puniſhment as ſhall be eſteemed proper by the captain and officers.

3. That it ſhall be entirely in the captain's power to cruize where he ſhall eſteem moſt beneficial for the intereſt of the owners and ſhip's company.

[*In ſome, it is to cruize where the managers, and in others, where the owners ſhall direct.*]

4. That if any perſon be found a ringleader of mutiny, or cauſing a diſturbance on board, refuſe to obey the command of the captain and officers, behave with cowardice, or get drunk in time of action, he or they ſhall forfeit his or their ſhare, to be divided amongſt the ſhip's company; and be otherwiſe puniſhed according to law.

5. That all clothes, bedding, watches, and rings in wear, buttons, buckles, and what elſe is deemed ſmall plunder by cuſtom, is to be divided amongſt the ſhip's company, according to their ſeveral ſtations; the captain not to interfere with them: The cabin utenſils, in preſent uſe, for the commander.

6. That if any perſon ſhall ſteal, or convert to his uſe, any part of the prize or prizes, or be found pilfering any money or goods, and be convicted thereof, he ſhall forfeit his ſhare to the ſhip and company.

7. The captain has the power of taking out of any prize, or prizes, whatever ſtores he may judge neceſſary for the ſhip *Terrible*, without paying for them; provided the prize is not diſabled thereby.

8. That whoſoever firſt ſpies a ſail, which proves to be a prize, ſhall have ſeven pounds [*in ſome only one guinea, in others five*] and the firſt man proved to board a prize before ſhe ſtrikes, ſhall have a gratuity of ten pounds [*in ſome ten, and in others fifteen guineas*] for his bravery, to be deducted out of the groſs ſum of the prize.

9. That if any private man ſhall loſe a leg, arm, or eye, in time of action, or in the ſhip's ſervice, he ſhall beſides the advantage of *Greenwich* hoſpital, have a gratuity of 25l. and in proportion to the officers, excluſive of ſhares [*in others only* 20l. *to a private man,* 50l. *to the captain,* 40l. *to the firſt lieutenant,* and 30l. *to each of the other lieutenants, maſter, and ſurgeon*] the ſaid ſums to be deducted out of the groſs ſum of the prize; and in caſe of mortality under cure, the ſaid gratuity and ſhares to be made to their aſſigns.

10. That

10. That for the further encouragement of the ſaid private man of war's company, it is agreed, that the chief officers ſhall have *ſix guineas*, the petty officers and able ſeamen *five guineas*, able bodied landmen *three guineas*, and boys *one guinea*, advanced to them in the *Hope*. [*In ſome, the officers and ſeamen have only five guineas and the landmen two.*]

11. That the half of the net proceeds of all prizes, taken by the ſhip *Terrible* which is appropriated to the ſhip's company be divided amongſt them in the manner following, after the captain's 6 or 8 *per cent.* [*as ſhall be agreed*] is taken thereout as above.

When the captain has not the above mentioned 6 or 8 *per cent.* but divides with the ſhip's company, he commonly has 12 ſhares as follows, viz.

	ſhares		ſhares
The captain	12	The caulker	2
The firſt lieutenant	5 ½ to 6	The maſter at arms	1 ½ to 2
The ſecond lieutenant	4 ½ to 6	The armourer	1 ½
The third lieutenant	3 ½ to 5	The midſhipmen, to each	1 ½ to 2
The maſter	3 ½ to 5	The quarter maſters, to each	1 ½
The firſt mate	3 to 4	The quarter gunners to each	1 ¼ to 2
The ſecond mate	2 to 3	The corporal, to each	1 ¼ to 1 ½
The ſurgeon	3 ½ to 4	The ſailmaker	1 ½
The ſurgeon's mate	2 ½ to 3	The yeoman of the powder room	2
The lieutenant of marines	3 to 4	The ſhip's ſteward	2
The gunner	3	The captain's ditto	1 ½
The gunner's mates, to each	2	The maſter of languages	1 ½
The carpenter	3	The captain's clerk	2
The carpenter's mates, to each	2	The ſhip's cook	1 ½ to 2
The boatſwain	3	The captain's ditto	1 ½
The boatſwain's mates, to each	2	The able ſeamen, to each	1 ½ to 1
The purſer	3	The able landmen, to each	1
The cooper	1 ½ to 2	The ſea boys, to each	½ or ¾
The muſick, to each of them	2	The land boys, to each	¼ to ½

12. That on the death of the captain, the command do devolve on the next officer, and ſo on in rotation; and, for the encouragement of the able ſeamen, and others, on the loſs of officers, they are to be replaced out of the ſhip's company, according to their gallant behaviour, as the captain ſhall appoint.

13. That whoever deſerts the ſaid ſhip *Terrible*, within the time here-under mentioned, ſhall forfeit his prize money to the owners and company, to enable them to procure others in their room.

14. All and every one on board does covenant and agree to ſerve on board the ſaid ſhip *Terrible*, the term of ſix months, beginning at the ſaid ſhip's departure from the *Downs*.

15. And laſtly, for the true performance of all, and every the aforementioned covenants and agreements, each and every of the ſaid parties do bind themſelves, their heirs, executors, and adminiſtrators, in the penal ſum of *five hundred* pounds, lawful money of *Great Britain*, firmly by theſe preſents: In witneſs whereof the ſaid parties to theſe preſents have hereunto ſeverally ſet their hands and ſeals, the day of in the year of our Lord 1746, and the twentieth year of the reign of our ſovereign lord king *George* the ſecond.

The wording of ranſom bills has been various, though the ſubſtance the ſame; I have therefore only added here the form of one, which I give my reader, both in *French* and *Engliſh*, as they are commonly printed for privateers to carry with them.

I *John Stout*, commander of the private ſhip of war, called the *Succeſs*, by virtue of his *Britannick* majeſty's commiſſion, dated at *London*, the twenty-fourth day of *Auguſt*, 1746, to ſeize all ſubjects and vaſſals, ſhips, goods, monies and effects whatſoever, of

of the *French* king, and king of *Spain*, having taken a ſhip or veſſel called the *Malheureux* of *Nantes*, whereof *John Martel* was commander, burden about two hundred tons, bound from the ſaid port to *Cadiz*, under *French* colours, laden with wheat, in the latitude of and longitude from *London*; the ſaid ſhip and cargo belonging to Meſſrs. *La Bourdonnage & Comp.* of *Nantes*, ſubjects of the *French* king, which ſhip and wheat I have agreed to ranſom for one thouſand eight hundred pounds ſterling, to be paid in *London*, within two months from the date hereof, to the order of Mr. *James Fillpurſe*; in conſideration whereof, I have ſet the ſaid ſhip and cargo at liberty, to proceed for the ſaid port of *Cadiz*, where ſhe ſhall be obliged to arrive within the ſpace of thirty days from the date hereof, after the expiration of which time, this agreement ſhall not warrant her from being taken again by any *Engliſh* ſhip of war or privateer; for the true payment of which ranſom, I have received as hoſtage, Mr. *Thomas Lecroy*, belonging to the ſaid ſhip, who is not to be ſet at liberty, until the ſaid ranſom be fully and truly paid, as above mentioned; I therefore pray and deſire all friends and allies, to ſuffer the ſaid ſhip *Malheureux*, to paſs and proceed to the ſaid port of *Cadiz*, without any lett or moleſtation within the ſaid covenanted time. And I the ſaid *John Martel*, commander of the ſaid ſhip the *Malheureux*, as well in my own name, as in the name of the aforeſaid Meſſrs. *La Bourdonnage & Comp.* owners of the ſaid ſhip and cargo, have voluntarily ſubmitted myſelf to the payment of the ſaid ranſom of one thouſand eight hundred pounds ſterling, in *London*, as aforeſaid; for which I have given the ſaid Mr. *Thomas Lecroy* for hoſtage, who, upon the payment of the ſaid ſum as agreed, ſhall be immediately releaſed and ſet free, and at full liberty to return to his own country, or whereſoever he ſhall think proper; hereby promiſing not to act contrary to the conditions of this agreement, whereunto we have, with the ſaid hoſtage, interchangeably ſet our hands, on board the ſaid private ſhip of war, this third day of *September*, 1746.

John Stout.
John Martel.
Thomas Lecroy.

Signed and delivered in the preſence of
A. B. *E. E.*
C. D. *G. H.*

In French.

JE *Jean Stout*, Commandant de l'Armateur nommé le *Succes*, en Vertu d'une Commiſſion d'une, Lettre de Marque de ſa Majeſté *Britannique*, ſignée à *Londres* le Vingt Quatriéme Jour du Mois d'*Août*, de l' An 1746, pour prendre & ſaiſir les Vaiſſeaux, Biens, & Effets des Sujets de la *France* & d' *Eſpange*, ayant ſaiſi ſur, & pris, le Vaiſſeau nommé le *Malheureux* de *Nantes*, ſous le Commandement de Monſ. *Jean Martel*, autour du deux Cent Toneaux de Port, venant du dit Port, & deſtiné pour celle-la de *Cadix*, ſous Pavillon *François*, chargé de Blé, dans Latitude de & Longitude de *Londres*; le dit Vaiſſeau & Sargaiſon appartenant a Meſſrs. *La Bourdonnage & Comp.* de *Nantes*, ſujets du Roy *François*, lequel Vaiſſeau & Blé je ſuis convenu de rançonner, moyennant la Somme de Mille & Huit Cent Livres *Sterlines*, qui doit être payée à *Londres* dans deux Mois du Date de ceci, à l'Ordre du Monſ. *Jaques Fillpurſe*; & en Conſideration du dit Somme, j'ai relaché & remis le dit Vaiſſeau & Cargaiſon en Liberté pour aller au dit Port de *Cadix*, où il ſera tenu de ſe rendre dans le Tems & Eſpace de Trente Jours du Date de celle ci, après l'Expiration du quel Tems le préſent Traité ne pourra la garantir d'être arrêté & pris par aucun Vaiſſeau de Guerre ou Armateur. Pour Sureté de la quelle Rançon j'ai reçu en Otage Monſ. *Thomas Lecroy*, appartenant au dit Vaiſſeau, qui ne doit être relaché, qu'après le Payement de la dite Rançon: Donc je prie & ſupplie a tous Amis & Alliés de laiſſer paſſer le dit Vaiſſeau le *Malheureux* ſurement & librement

librement pour aller au dit Port de *Cadix*, ſans aucun Trouble ou Empêchement quelconque, pendant le dit Tems ſtipulé & convenu. Et je, le dit *Jean Martel*, Maître du dit Vaiſſeau le *Malheureux*, tant en mon Nom, comme en celui de les ſuſdits Meſſrs. *La Bourdonnage & Comp.* Propriétaires du dit Vaiſſeau & Charge, me ſuis voluntairement ſoûmis au Payement de la dite Rançon, de Mil & Huit Cent Livres Sterlines dans la Ville de *Londres*, comme ſuſdit; pour Sureté de laquelle j'ai donné en Otage le dit Monſ. *Thomas Lecróy*, qui, immediatément après le Payement du dit Somme convenu, ſera relaché & mis en entiere & pleine Liberté de retourner dans ſon Païs, ou partout où il trouvera a-propos, promettant de ne point contrevenir aux Conditions du préſent Traité; dont nous avons, avec le dit Otage, reciprocamment ſigné, abord du dit Armateur, ce *troiſieme* Jour du *Septembre* de 1746.

Of Pirates, or Sea Rovers.

A PIRATE is a ſea-thief, or an enemy to human kind, who aims at enriching himſelf by marine robberies, committed either by force, fraud, or ſurprize, on merchants or other traders at ſea; and the hiſtories of them are filled with the barbarities they have committed on ſuch occaſions, and the ſevere uſage they have given to thoſe who have been ſo unhappy as to fall into their hands.

They confine themſelves to no place, nor have any ſettled reſidence, but are rovers at large; though they generally cruize where moſt likely to meet with prey, and in parts where they have the greateſt probability of finding ſupplies, and which afford the beſt ports for their ſafety: And as all theſe circumſtances unite in *America*, that part of the world has been moſt peſtered with them; and they being enemies to all, all ought to be enemies to them, and no faith is to be kept with villains who deſpiſe both the laws of God and man: They juſtly forfeit the protection of their natural ſovereign, and any prince hath power to make war againſt and deſtroy them, though not ſubjects to his government.

Pirates, tho' called enemies, are yet improperly termed ſo, as they are no commonwealth, nor live by ſettled laws, but rules founded on iniquity, and which they frequently break through, to the deſtruction of one another: That ſuperiority which they aſſign to ſome among them, though neceſſary to their wicked union, is oftentimes changed, as humour and caprice directs, and the ſtrongeſt or moſt profligate becomes a chief by mutual conſent; and as no community can ſubſiſt without ſome ſort of government, ſo theſe make a ſhew and profeſſion of one; do ſometimes comply with the agreements made, more eſpecially with thoſe who ſupply them with neceſſaries, though this may reaſonably be ſuppoſed to proceed more from the motives of ſelf-preſervation than from any intention of doing right or juſtice to thoſe iniquitous perſons who carry on ſuch a villainous and contraband trade: It is true, all are not equally bad; for we have heard of ſome who have governed with more moderation, and not entirely ſhook off humanity, as the generality of them have; but even the beſt of them are offenſive to the fair trader, and, by commencing pirates, they become obnoxious to thoſe laws which otherwiſe were made to protect them. *Grot.* de Jure Belli & Pacis, Lib. 6. Cap. 20. S. 40.

There are, however, inſtances where ſucceſs has made a company of them ſo powerful as to induce them to ſettle, and form themſelves into a common-wealth: It was to this that *Algiers*, *Tripoli*, and *Tunis* owe their eſtabliſhment, and which they have ſupported for many years, though they really ſtill ſubſiſt by their quondam profeſſion, or

or what is very like it; and only obſerve the treaties made with them ſo long as the rabble will permit, and it ſuits their conveniency; yet they avoid quarrelling with all the *European* ſtates at once, but take them by a ſort of rotation, and plunder from them what they can, one after another, for which they ſometimes ſmart, though too ſeldom: However, ſince their becoming a ſtate, and profeſſing allegiance to the *Grand Signor*, princes have thought proper to treat with them, and to admit their ambaſſadors on the ſame footing as thoſe from other potentates, with reſpect to their immunities and privileges.

It is undoubtedly both for the honour and intereſt of all princes to ſuppreſs pirates and not ſuffer them by any means to find ſhelter or refuge in any part of their dominions, but on the contrary to arm againſt them, and provide ſuch remedies as may reſtrain their progreſs, which our kings have always done, though it is dubious whether obliged thereto by the civil or common law of this kingdom.

If a maſter of a ſhip, after making the beſt defence he could, is taken by a pirate, and for the redemption of his ſhip and cargo willingly ſubmits to become a ſlave to his captors, the ſaid ſhip and cargo are, by the law marine, tacitly obliged to contribute to the obtaining his freedom; but if a pirate, by feigning himſelf diſtreſſed, with the uſual ſignals, or pretending to be ſtranded, leaky, or in any other danger, ſhall, by theſe means, allure the maſter to vary his courſe in order to afford his aſſiſtance, and ſo he falls into the trap the pirate has laid for him, although he frees the veſſel and her lading by remaining a ſlave, they are no ways obligated to contribute to his redemption, as his capture was occaſioned by his own folly in being ſo decoyed. Ld. *Raymond*, 933, 934.

A ranſom promiſed to a pirate is not binding by the civil law, therefore no wrong is created by not complying with it; and the reaſon is, that the law of arms is not communicated to ſuch, neither are they capable of enjoying that privilege which lawful enemies may challenge in the caption of another: However, this hath its limits; for a pirate may have a lawful poſſeſſion, which he cannot be denied claiming at law, if injury or wrong be done him, and this is in conſequence of his taking a legal courſe; for by that he ſubmits to the magiſtrate, and pays obedience to the laws in his demanding juſtice. *Molloy* de Jure Mar. P. 60.

If a pirate attacks and takes a merchant-ſhip, and afterwards redeems her, on the maſter's ſwearing to pay him a certain ſum, at a time and place agreed on, if he does not comply with his oath, he is ſuppoſed by ſome not to be guilty of perjury, as a pirate is not a determinate but a common enemy, and with whom they think neither faith nor oath is to be kept; others pretend nothing can free him from a compliance with his vow, as it is not men only that are concerned in it, but God alſo, who is certainly no friend to perjury. However, with humble ſubmiſſion to better judgments, I think ſome diſtinction ought to be made in concurring circumſtances; for ſuppoſe, either at ſea or land, a robber claps a piſtol to the breaſt of the perſon he has ſeized, and makes him ſwear to do ſuch things as he cannot perform without great prejudice to himſelf and his dependents, as the payment of a ſum of money, which may diſtreſs his circumſtances and ruin his family; I ſay, in ſuch a caſe, or other ſimilar ones, I believe no one will pronounce the oath to be binding, which the terrors of a threatening enemy had forcibly drawn from him that made it.

An *Engliſhman* committing piracy on the ſubjects of any prince or ſtate in amity with the crown of *England*, is within the ſtatute of 28 *Hen.* VIII. and ſo it was held where one *Winterſon*, *Smith*, and others, had robbed a ſhip of one *Maturine Guatier*, belonging to and bound from *Bourdeaux*, with wines for *England*, and the ſame was felony by the *law marine*, and the parties were convicted accordingly. *Rot. Adm.* 28 *Eliz.* m. 24.

And ſo if the ſubject of any other nation or kingdom, being in amity with the king of *England*, commit piracy on the ſhips or goods of the *Engliſh*, the ſame is felony, and puniſhable by virtue of the above act: And it was ſo adjudged, where one *Careleſs*, captain of a *French* man of war, and divers others, attacked four merchant-ſhips, going from the port of *Briſtol* to *Caermarthen*, and robbed them of about 1000l. for which he and the reſt were arraigned, and found guilty of piracy. Ditto.

But before the 25th of *Edw.* III. if the ſubjects of a foreign nation and ſome *Engliſh* had combined in the committing of piracy, it would have been treaſon in the *Engliſh*, and felony in the foreigners; an inſtance of which is quoted by *Shard*, where a *Nor-*

man,

man, being commander of a ſhip, had, together with ſome *Engliſh*, committed robberies on the ſea, and being taken and tried, they were found guilty, the *Norman* of felony, and the *Engliſh* of treaſon, who accordingly were drawn and hanged. But at this day, by the laws marine, they would both receive judgment as felons, without diſtinction. 42 *Aſſiſe placit.* 25. *Shard. Vid.* 2 *Hen.* V. Cap. 6.

If the ſubjects of a prince at enmity with the crown of *England* ſhall ſail aboard an *Engliſh* pirate, with other *Engliſh*, and then a robbery is committed by them, and they are afterwards taken, it is without doubt a felony in the *Engliſh*, but not in the foreigners; for they cannot be tried by virtue of the commiſſion upon the ſtatute; for it was no piracy in them, but the depredation of an enemy, for which they ſhall receive a trial by martial law, and judgment accordingly. *Molloy* de Jure Mar. P. 61. S. 10.

Piracies committed in the *Britiſh* ſeas, by the ſubjects of any power in amity with the crown of *England*, are properly puniſhable by this crown only; and if a *Spaniard* robs a *Frenchman* on the high ſea, their princes being both then in amity with the crown of *England*, and the ſhip is brought into a port of this kingdom, the *Frenchman* may proceed *criminaliter* againſt the *Spaniard* to puniſh him, and *civiliter* to have reſtitution of his veſſel; but if the veſſel is carried *infrà preſidia* * of that prince by whoſe ſubject the ſame was taken, there can be no proceedings *civiliter*, and doubted if *criminaliter*; but the *Frenchman* muſt reſort into the captor's or pirate's own country, or where he carried the ſhip, and there proceed. *Selden* Mare Clauſ. Lib. 1. Cap. 27. *Grot.* de Jure Belli ac Pacis, C. 9. S. 16.

If a piracy be attempted on the ocean, and the pirates are overcome, the captors may immediately puniſh them with death, and not be obliged to bring them into any port, provided this occurs in places where no legal judgment can be obtained. *Molloy* de Jure Mar. P. 62. S. 12.

And therefore, if a ſhip ſhould be on a voyage to *America*, or on a diſcovery of thoſe parts ſtill unknown to us, and in her way be attacked by a pirate, whom ſhe fortunately overcomes, in this caſe, by the laws marine, the veſſel becomes the captor's property, and the pirates may be immediately executed, without the ſolemnity of condemnation. Ditto.

So likewiſe, if a ſhip be aſſaulted by pirates, and in the attempt they are ſubdued and taken, and carried into the next port, if the judge openly rejects their trial, or the captors cannot wait till judgment ſhall be given, without certain peril and loſs, they may do juſtice on themſelves, without further delay or attendance. P. 62. S. 13.

If a pirate at ſea attacks a ſhip, and in the engagement kills a perſon in her, though he has not ſucceeded in taking her, the pirates are all principals in the murder, if the *common law* hath juriſdiction of the cauſe; but by the *law marine* they only who gave the wound ſhall be principals, if they can be known, and the reſt acceſſaries; and where they have cognizance of the principal, the courts at *common law* will ſend them their acceſſary, if he comes before them. *Rot.* Admir. 28 *Eliz.* m. 24.

A *Dutchman*, naturalized by the duke of *Savoy*, and living at *Villa Franca* in his dominions, procured a commiſſion from the States of *Holland*, and coming to *Leghorn*, there rid with the colours and enſigns of the duke of *Savoy*: The *Engliſh* ſhip *Diamond*, being then in port, took in her lading, and proceeded on her voyage, in which ſhe was ſurprized and taken by that *caper*, and carried into *Villa Franca*, and there condemned and ſold; but afterwards returning to *England*, the original proprietors, having notice of it, made a ſeizure; and upon trial, adjudication paſſed for them; for though the ſhip of war and captors were of *Savoy*, and carried their prize thither, yet being taken by virtue of a *Dutch* commiſſion, according to the *law marine* ſhe muſt be carried *infrà præſidia* of that prince or ſtate by virtue of whoſe commiſſion ſhe was taken; nor does ſuch carrying of the enſigns or colours of the duke of *Savoy*, who was then in amity with the crown of *England*, nor the commander's being a ſubject of that prince, make him a pirate, or ſubject him, or thoſe to whom the intereſt of the prize was transferred, any ways to be queſtioned for the ſame *criminaliter*; for that the original

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* *March's* Rep. 110.

quoad, the taking, was lawful *, as one enemy might take from another; but *civiliter*, the ſame might be, for that the captor had not entitled himſelf to a firm poſſeſſion. *Yelverton*, Fol. 134, 135. *Grotius*, Lib. 3. Cap. 9. S. 15 and 16.

And therefore, in all caſes where a ſhip is taken by letters of *marque* or *piracy*, if the ſame is not carried *infrà præſidia* of that prince or ſtate by whoſe ſubject the ſame was taken, the owners are not diveſted of their property, but may reſeize whereſoever they meet with it. *Mich.* 8 *Jac.* in *B. R. Brownlow*, 2 Part. *Weſton's* Caſe.

If a pirate attacks a ſhip, and only takes away ſome of her men, with an intention to ſell them for ſlaves, this is piracy by the *law marine*; and if a bale or pack of merchandize be delivered to a maſter to carry abroad to a certain port, and he goes away with it to another, and there ſells or diſpoſes of it †, this is no felony; but if he opens the bale or pack, and takes any thing out, *animo furandi*, this act may amount to ſuch a larceny as he may be indicted for in the admiralty, though it does not amount to a repriſalia; yet if the ſaid maſter ſhould carry the lading of this ſhip to the port appointed, and after re-take the whole pack or bale back again, this may amount to a piracy; for he being in the nature of a common carrier, the delivery had taken its effect, and the privity of the bailment is determined. *C.* 2 Inſt. 109. Lib. 8. Fol. 32.

In caſe a ſhip ſhall be attacked by a pirate, and the maſter for her redemption ſhall give his oath to pay a ſum certain; though there be no taking, yet is the ſame piracy by the *law marine*; but by the *common law* there muſt be an actual taking, tho' it be but to the value of a penny, in the ſame manner as it is in a robbery on the highway. 44 *Edw.* III. 14; 4 *Hen.* IV. 2; S. ad Leg. Rhod. de Jact. L. 2.

And if a ſhip ſhall be riding at anchor, with part of the mariners in her boat, and the reſt on ſhore, ſo that none remain in the ſhip, yet if ſhe be attacked and robbed, the ſame is piracy. 14 *Edw.* III. 115.

A merchant has procured letters of marque or repriſe, and delivered the commiſſion to others to endeavour a ſatisfaction; if thoſe ſo commiſſioned commit piracy, the veſſel is certainly forfeited; but the merchant is no ways liable to make ſatisfaction; for though the ſuperior by the civil law is anſwerable for the actions of his ſervants, yet as this queſtion muſt be decided by the law of nations, in virtue of which ſuch commiſſions are awarded or granted, the merchant by it will be exempted from anſwering for the behaviour of thoſe he commiſſioned, unleſs it can be proved he foreknew that they would commit ſuch a piracy, or ſpoliation, or that he had any way abetted or conſented to the ſame, by which the right may be forfeited, and the civil law let in, to acquire ſatisfaction. Trin. 7 *Jac.* in *B. R. Roll's* Abr. 530. *Moor's* Rep. 776.

If goods are taken by a pirate from one ſhip, and he afterwards attacks another, by whom he is ſubdued, he thereby becomes, according to the *law marine*, an abſolute prize to the captor, after a legal condemnation. And,

By the ſtatute of 27 *Edw.* III. Cap. 13. if a merchant loſe his goods at ſea by piracy or tempeſt, not being wrecked, and they afterwards come to land, if he can make proof they are his goods, they ſhall be reſtored to him, in places guildable, by the king's officers and ſix men of the country; and in other places, by the lords of them, or their officers, with ſix men of the country. If a pirate takes goods at ſea, and ſells them, the property is not thereby changed, no more than if a land thief ſteals, and ſells them. 3 *Bul.* 28, 29; *March*, 110.

This law hath a great affinity with that of the *Roman*, called *de Uſu Captione*, or the *Atinian Law*; as *Atinius* therein enacted, that the plea of preſcription, or long poſſeſſion, ſhould not avail in things that had been ſtolen, but the intereſt which the right owners had ſhould remain perpetually. *Godb.* 193, *Barber's* Caſe. *Sigonius de Jure* Rom. L. 1. C. 11.

Though it is held by the *common law* of *England*, that if a man commit piracy upon the ſubjects of another prince, though in league with us, and brings the goods into *England*, and ſells them in a market *overt*, the ſame ſhall bind, and the owners are for ever excluded; and, if they ſhould endeavour in the admiralty to diſpute the property in order to reſtitution, they will be prohibited. *Bingley's* Caſe, 1 *Roll's* Abrid. F. 530. Lit. C. 4. *Grot.* L. 3. C. 9. S. 16.

A ſhip

* 3 *Bulſtrode* 28. † *F. Nautæ Cap.* L. 1. S. 3. *Stat. Glanvil*, Lib. 10. C. 13. 13 *Edward* IV.

A ſhip which belonged to ſeveral owners was ſent to the *Indies* on a trading voyage, and upon the high ſea the mariners committed piracy, for which, on her return to the river *Thames*, the admiral ſeized her as *Bona Pyratarum*; but the merchants her owners took the ſails and tackle out of her, and there was a decree, that the admiral ſhall not have the goods ſtolen from other men, but the owners ſhall have them. 1 *Roll's* Rep. 285. The Caſe of *Hildebrand* & *Al'*.

It appears by the preamble to the ſtatute of 28 *Hen.* VIII. Cap. 15. that this offence was not puniſhable by the common law, but the ſame was determined and judged by the admiral, after the courſe of the civil law; but by force of the ſaid act the ſame is enquired of, heard, and determined, according to the courſe of the common law, as if the offence had been committed on land. *Molloy* de Jure Mar. F. 67. S. 24.

But by Lord *Hale* *, the court of *King's Bench* had certainly a concurrent juriſdiction with the admiralty, in caſes of felony committed upon the *Narrow Seas*, or coaſt, though it were high ſea, becauſe within the king's realm of *England:* But this juriſdiction of the common law courts was interrupted by a ſpecial order of the king and council, 35 *Edw.* III. and ſince the 38 *Edw.* III. it does not appear that the common law courts take cognizance of crimes committed upon the high ſeas.

And for the trial of piracy, and to determine what actions come under this denomination, as alſo to encourage the ſuppreſſion of it, the following acts have been made, *viz.*

All offences of piracy, robbery, and murder, done upon the ſea, or in any haven, river, or creek, where the admirals pretend to have juriſdiction, ſhall be inquired into, tried, heard, and determined, in ſuch places in this realm, as ſhall be limited by the king's commiſſion, as if ſuch offences had been done upon land; and ſuch commiſſions ſhall be under the great ſeal, directed to the lord admiral, or his lieutenant or deputies, and other perſons named by the lord chancellor, to hear and determine ſuch offences after the common courſe of law, uſed for felonies committed within the realm. 27 *Hen.* VIII. C. 4. S. 1.

The remaining Sections of this Act are omitted, becauſe the Act is amended and re-enacted 28 Hen. VIII. *Cap.* 15. *which follows.*

All treaſons, felonies, robberies, murders, and confederacies, committed upon the ſea, or in any haven, river, creek, or place, where the admirals have, or pretend to have any power or juriſdiction, ſhall be inquired, heard, and determined in ſuch ſhires and places in this realm, as ſhall be limited by the king's commiſſion, as if ſuch offences had been committed upon land, and ſuch commiſſion ſhall be under the great ſeal, directed to the admirals, &c. and to three or four ſuch other perſons as ſhall be named by the lord chancellor, after the common courſe of the law uſed for treaſon, felonies, &c. committed upon land, within this realm. 28 *Hen.* VIII. C. 15. S. 1.

Such perſons to whom ſuch commiſſions ſhall be directed, or four of them, ſhall have power to inquire of ſuch offences by the oaths of twelve lawful inhabitants in the ſhire limited in their commiſſion, as if ſuch offences had been committed upon land within the ſhire; and every indictment found before ſuch commiſſioners, of any treaſons, felonies, or other ſuch offences committed upon the ſeas, or in any haven, river, or creek, ſhall be good in law; and ſuch proceſs, judgment, and execution, ſhall be had againſt every perſon ſo indicted, as for treaſon, felony, or other ſuch offences done upon land; and the trial of ſuch offences ſhall be by twelve men, inhabiting in the ſhire limited within ſuch commiſſion, and no challenge to be had for the hundred; and ſuch as ſhall be convicted of any ſuch offences ſhall ſuffer ſuch pains of death, loſſes of land and goods, as if they had been convicted of the ſame offences done upon land. S. 2.

For treaſon, robberies, felonies, murders, and confederacies, done upon the ſea, or in any place above rehearſed, the offenders ſhall not have benefit of clergy. S. 3.

This act ſhall not extend to any perſon for taking any victuals, cables, ropes, anchors, or ſails, which ſuch perſon, compelled by neceſſity, taketh of any ſhip which may ſpare the

* Hiſt. Pl. Cr. Vol. II. P. 14, 15.

the ſame ſo the perſon pay for the ſame, money or money-worth, or deliver a bill obligatory to be paid, if the taking be on this ſide the ſtraits of *Marrock*, to be paid within four months; and if it be beyond the ſaid ſtraits, to be paid within twelve months; and that the makers of ſuch bills pay the ſame at the day limited. 28 *Hen.* VIII. c. 15. S. 4.

When any ſuch commiſſion ſhall be directed to any place within the juriſdiction of the five ports, ſuch commiſſion ſhall be directed to the lord warden of the ports, or his deputy, and three or four ſuch other perſons as the lord chancellor ſhall name. S. 5.

Whenſoever any commiſſion ſhall be directed unto the five ports, for the inquiſition and trial of any of the offences expreſſed in this act, ſuch inquiſition and trial ſhall be had by the inhabitants in the five ports, or the members of the ſame. S. 6.

It is ordained that all the piracies, felonies, and robberies, committed upon the ſea, or in any haven, river, creek, or place, where the admirals have power or juriſdiction, may be tried at ſea, or upon the land, in any of his majeſty's iſlands, plantations, colonies, &c. appointed for that purpoſe by commiſſion under the great ſeal of *England*, or the ſeal of the admiralty, directed to ſuch commiſſioners as his majeſty ſhall think fit, who may commit ſuch offenders, and call a court of admiralty thereupon, to conſiſt of ſeven perſons at the leaſt. 11 and 12 *Will.* III. C. 7. S. 1.

And for want of ſeven, then any three of the commiſſioners may call others, as therein is mentioned *, and the perſons ſo aſſembled may proceed, according to the courſe of the admiralty, to iſſue out warrants for bringing perſons accuſed of piracy or robbery before them to be tried, and to ſummon witneſſes, and take examinations, and do all things neceſſary for the hearing and final determination of any caſe of piracy, &c. and to give ſentence of death, and award execution of the offenders, who ſhall thereupon ſuffer loſs of lands, goods, and chattels. S. 2, 3. * S. 4.

So ſoon as any court ſhall be aſſembled, the king's commiſſion ſhall be read, and the court ſhall be proclaimed, and then the preſident of the court ſhall take the following oath, viz. S. 5.

I A. B. *do ſwear in the preſence of Almighty God, that I will truly and impartially try and adjudge the priſoner or priſoners, which ſhall be brought upon his or their trials before this court, and honeſtly and duly on my part, put his majeſty's commiſſion for the trying of them in execution, according to the beſt of my ſkill and knowledge; and that I have no intereſt, directly or indirectly, in any ſhip or goods, for the piratically taking of which any perſon ſtands accuſed, and is now to be tried.*—So help me God.

And he having taken this oath, ſhall adminiſter the ſame to every perſon, who ſhall ſit and have voice in the court, and thereupon the priſoners ſhall be brought before them; and then the regiſter ſhall read the articles againſt ſuch priſoners, wherein ſhall be ſet forth the particular facts of piracy, robbery, and felony, with the time and place, and in what manner it was committed; and each priſoner ſhall be aſked, whether he be guilty or not guilty; whereupon he ſhall immediately plead *guilty* or *not guilty*, or elſe it ſhall be taken as confeſſed; and if any priſoner ſhall plead not guilty, witneſſes ſhall be produced by the regiſter, and ſworn and examined in the priſoner's preſence; and after a witneſs has anſwered all the queſtions propoſed by the preſident, and given his evidence, it ſhall be lawful for the priſoner to have the witneſs croſs-examined, declaring to the court what queſtions he would have aſked, and the preſident or the court ſhall interrogate the witneſs accordingly; and every priſoner ſhall have liberty to bring witneſſes for his defence, who ſhall be ſworn and examined, and afterwards the priſoner ſhall be heard for himſelf; which being done, the priſoner ſhall be taken away, and all other perſons; except the regiſter, ſhall withdraw; and the court ſhall conſider of the evidence; and the preſident ſhall collect the votes of the court, beginning at the junior, and ending with himſelf; and, according to plurality of voices, ſentence ſhall be given, and pronounced publickly in the preſence of the priſoner, being called in again; and, according to ſuch ſentence, the perſons attainted ſhall be put to death, in ſuch manner, and in ſuch place upon the ſea, or within the ebbing or flowing thereof, as the preſident, or the major part of the court, by warrant directed to a provoſt-marſhal, which they ſhall have power to conſtitute, ſhall appoint.

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Some public notary ſhall be regiſter of the court; and in caſe of his abſence, death, or incapacity, or for want of a perſon ſo qualified, the preſident ſhall appoint a regiſter, giving him an oath, duly, faithfully, and impartially to execute his office; which regiſter ſhall prepare all warrants and articles, and provide all things requiſite for any trial, according to the ſubſtantial and eſſential parts of proceeding in a court of admiralty in the moſt ſummary way; and ſhall make minutes of the proceedings, and enter them in a book, and ſhall tranſmit the ſame, with the copies of all articles and judgements, unto the high court of admiralty of *England*. 11 and 12 *Will.* III. C. 7. S. 6.

If any of his majeſty's ſhips ſhall commit piracy or robbery, or any act of hoſtility, againſt others his majeſty's ſubjects upon the ſea, under colour of any commiſſion from any foreign ſtate, or authority from any perſon whatſoever, ſuch offenders, and every of them, ſhall be adjudged pirates, felons, and robbers; and being convicted, according to this act, or 28 *Hen.* VIII. Cap. 15. ſhall ſuffer pains of death, and loſs of lands and goods. S. 7.

If a commander of a ſhip, or any mariner, ſhall, in any place where the admiral hath juriſdiction, betray his truſt, and turn pirate, enemy, or rebel, and piratically and felonioufly run away with the ſhip, or any boat, ordnance, ammunition, or goods, or yield them up voluntarily to any pirate, or ſhall bring any ſeducing meſſages, from any pirate, enemy, or rebel; or conſult, or confederate with, or attempt to corrupt any commander, officer, or mariner, to yield up or run away with any ſhip or goods, or turn pirate, or go over to pirates; or if any perſon ſhall lay violent hands on his commander, to hinder him from fighting in defence of his ſhip and goods, or confine his maſter, or endeavour to make a revolt in the ſhip, he ſhall be adjudged a pirate, felon, and robber, and being convicted, according to this act, ſhall ſuffer death, and loſs of lands and goods. S. 8.

All perſons who ſhall, either on land or upon the ſeas, knowingly ſet forth any pirate, or aſſiſt or maintain, procure, command, counſel, or advice any perſon to commit any piracies or robberies upon the ſeas, and ſuch perſon ſhall thereupon commit any ſuch piracy or robbery, all ſuch perſons ſhall be adjudged acceſſary to ſuch piracy and robbery; and after any piracy or robbery committed, every perſon who, knowing that ſuch pirate or robber has committed ſuch robbery, ſhall, on the land or upon the ſea, receive, entertain, or conceal any ſuch pirate or robber, or receive any ſhip or goods by ſuch pirate or robber, piratically and felonioufly taken, ſhall be adjudged acceſſary to ſuch piracy and robbery; and all ſuch acceſſaries may be enquired of, heard, and determined, after the common courſe of the law, according to the ſtatute 28 *Hen.* VIII. Cap. 15. as the principals of ſuch piracies and robberies ought to be; and, being attainted, ſhall ſuffer death, and loſs of lands and goods. S. 9.

When an *Engliſh* ſhip ſhall have been defended by fight againſt pirates, and any of the officers or ſeamen are killed or wounded, the judge of the admiralty, or his ſurrogate in *London*, or the mayor, or chief officer in the out-ports, aſſiſted by four ſubſtantial merchants, may, by proceſs out of the ſaid court, levy upon the owners of ſuch ſhips, &c. a ſum not exceeding 2l. per hundred, of the value of the freight, ſhip, and goods, ſo defended, to be diſtributed among the officers and ſeamen of the ſaid ſhips, or widows and children of the ſlain. S. 10.

A reward of 10l. for every veſſel of a hundred tons or under, and 15l. for every one of a greater burthen, ſhall be paid by the captain, commander, or maſter, to the firſt diſcoverer of any combination for running away with or deſtroying any ſuch ſhip, at the port where the wages are to be paid. S. 11.

This act ſhall be in force for ſeven years, &c. *Made perpetual* 6 Geo. I. Cap. 19. S. 12.

The commiſſioners appointed by 28 *Hen.* VIII. Cap. 15. or by this act, ſhall have the ſole power of hearing and determining the ſaid crimes, within all the plantations in *America*, governed by proprietors, or under charter from the crown, and ſhall iſſue their warrants for apprehending any pirates, &c. within any of the ſaid plantations, in order to their being brought to trial within the ſame, or any other plantation in *America*, or ſent into *England*, and all governors, &c. in the plantations, governed by proprietors, or under charters, ſhall aſſiſt the commiſſioners and officers, and deliver up the pirates, &c. in order to their being tried, or ſent into *England*. S. 13.

If

If any of the governors in the plantations ſhall refuſe to yield obedience to this act, ſuch refuſal is declared to be a forfeiture of all charters granted for the government or propriety of ſuch plantation. 11 and 12 *Will.* III. c. 7. S. 14.

When any commiſſion, for the trial and puniſhment of the offences aforeſaid, ſhall be directed to any place within the juriſdiction of the Cinque ports, ſuch commiſſion ſhall be directed to the lord warden, &c. S. 15.

All officers or ſailors, who ſhall deſert the ſhips wherein they are hired to ſerve for that voyage, ſhall forfeit all wages due to them. S. 16.

In caſe any maſter of a merchant-ſhip ſhall, during his being abroad, force any man on ſhore, or wilfully leave him behind in any of his majeſty's plantations, or elſe where, or ſhall refuſe to bring home with him all ſuch of the men which he carried out, as are in a condition to return, ſuch maſter ſhall ſuffer three months impriſonment. S. 17.

All perſons who ſhall commit any offences for which they ought to be adjudged pirates, by the act 11 and 12 *Will.* III. Cap. 7. may be tried as by the act 28 *Hen.* VIII. Cap. 15. and ſhall be debarred from the benefit of clergy. Nothing in this act to extend to *Scotland.* 4 *Geo.* I. C. 11. S. 7.

By 8 *Geo.* I. Cap. 24. S. 1. If any commander of a ſhip, or other perſon, ſhall trade with any pirate, or ſhall furniſh any pirate, felon, or robber, upon the ſeas, with ammunition, proviſion, or ſtores, or ſhall fit out any ſhip knowingly, and with a deſign to trade or correſpond with any pirate, &c. upon the ſeas; or if any perſon ſhall conſult, combine, or correſpond with any pirate, &c. knowing him to be guilty of any piracy, felony, and robbery, ſuch offender ſhall be adjudged guilty of piracy, &c. and ſhall be tried according to the ſtatute 28 *Hen.* VIII. Cap. 18. and 11 and 12 *Will.* III. Cap. 7. and, being convicted, ſhall ſuffer death, and loſs of lands and goods; and if any perſon belonging to any ſhip, upon meeting any merchant-ſhip on the high ſeas, or in any port, haven, or creek, ſhall forcibly board or enter ſuch ſhip, and, though they do not ſeize and carry her off, ſhall throw over-board or deſtroy any of the goods, they ſhall be puniſhed as pirates. 8 *Geo.* I. C. 24. S. 1.

Every ſhip fitted out with a deſign to trade or correſpond with any pirate, and all the merchandizes put on board the ſame with an intent to trade with any pirate, ſhall be forfeited, one moiety to the king, and the other to the informer, to be recovered in the high court of admiralty. S. 2.

All perſons declared acceſſaries, by 11 and 12 *Will.* III. to any piracy, are by this act declared principal pirates. S. 3.

Any offender convicted of any piracy, &c. by virtue of this act, ſhall not have benefit of clergy. S. 4.

And to encourage ſeamen and mariners to defend their ſhips from pirates, the ſaid act ordains, that in caſe any mariner, on board any merchant-ſhip, ſhall be maimed in fight againſt any pirate, upon due proof thereof, he ſhall not only have and receive the rewards appointed by 22 and 23 *Ch.* II. Cap. 11. but ſhall be provided for in *Greenwich* hoſpital, preferable to any other ſeaman who is diſabled from ſervice by age. S. 5.

Alſo, in order to encourage the defence of merchant-veſſels againſt pirates, the commanders or ſeamen wounded, and the widows of ſuch ſeamen as are ſlain, in any piratical engagement, ſhall be entitled to a *bounty* to be divided among them, not exceeding one-fiftieth part of the value of the cargo on board, *Blackſtone's Comment.* Vol. IV.

Lord *Mansfield* ſaid, in the caſe of *Goſs* and *Withers*, that in *Spain*, *Venice*, and *England*, the goods go to the captors of a pirate, againſt the owners, as there can be no condemnation to entitle the pirate, and this is agreeable to *Grotius de Jur. Bell.* and to *Locenius de Jur. Marit.*

However, by the marine ordinance of *France* in 1681, the ſhips and effects of their ſubjects, or of their allies, retaken from pirates, and reclaimed within a year and a day from the declaration which ſhall be made of them at the admiralty, ſhall be reſtored to the proprietors, on paying one-third of the value of the ſhips and goods, for charges of the recapture. This ordinance is accounted, by the *French* writers, a great inſtance of their national generoſity. But the ſtipulations in treaties of commerce and navigation between *England* and other powers go ſtill farther, and therefore ſhall be recited in this place.

" For the greater freedom of commerce and navigation, it is agreed and concluded, that the King of *Great-Britain* and the *States General*, ſhall not receive into their havens, cities, and towns, nor ſuffer that any of the ſubjects of either party do receive pirates or ſea rovers, or afford them any entertainment, aſſiſtance or proviſion, but ſhall endeavour that the ſaid pirates and ſea rovers, or their partners, ſharers, and abetters, be found out, apprehended, and ſuffer condign puniſhment, for the terror of others: And all the ſhips, goods, and commodities piratically taken by them, and brought into the ports of either party which can be found; nay, although they be ſold, ſhall be reſtored to the right owners, or ſatisfaction ſhall be given either to the owners, or to thoſe who by letters of attorney ſhall challenge the ſame, provided the right of their property be made to appear in the court of admiralty by due proofs according to law. *Treaty with Holland* 1667. It was the violation of this treaty on the part of the *Dutch* which contributed to the rupture between *Great-Britain* and *Holland*, at the cloſe of the year 1780. The regency of *Amſterdam* had not only protected, but given every aid in their power to *Paul Jones*, a native of *Great-Britain*, who, under a commiſſion granted to him by the rebel ſubjects of the king of *Great-Britain* in *America*, engaged and took his majeſty's frigate the *Serapis*, a ſloop called the *Counteſs of Scarborough*, and two or three *Britiſh* merchant-ſhips, all of which he carried to the *Texel*, and ſold the merchant veſſels and their cargoes, himſelf appearing publickly on the exchange of *Amſterdam*, where he was careſſed by the merchants, and the magiſtrates ſupplied *Jones* with proviſions, ammunition, &c. for refitting and putting to ſea, notwithſtanding the repeated remonſtrances of Sir *Joſeph Yorke*, the *Britiſh* miniſter at the *Hague*, who demanded reſtitution of the king's ſhips, and the ſeiſure of *Paul Jones* the pirate."

If any commander, or other officer or ſeaman of a merchant ſhip, that carries guns and arms, ſhall not fight and endeavour to defend themſelves when attacked by a pirate, or ſhall utter any words to diſcourage the other mariners from defending the ſhip, by which means ſhe is taken by the pirate, in ſuch caſe, the ſaid commander, &c. ſhall forfeit all the wages due to him or them, to the owner of the ſhip, and ſuffer ſix months impriſonment. 8 *Geo.* I. c. 24. S. 6.

No maſter, or owner of any merchant ſhip, ſhall pay to any ſeaman beyond the ſeas, any money or effects on account of wages, exceeding one moiety of the wages due at the time of ſuch payment, till ſuch ſhip ſhall return to *Great-Britain*, *Ireland*, or the plantations, or to ſome other of his majeſty's dominions whereto they belong, on forfeiture of double the money ſo paid, &c. S. 7.

This act ſhall extend to all his majeſty's dominions in *Aſia*, *Africa*, or *America*, and ſhall be a publick act, and ſhall continue ſeven years, &c. *made perpetual* 2 *Geo.* II. Cap. 28.

The act 11 and 12 *Will.* III. Ch. 7. does not alter the offence, or make the offence felony, but leaves it as it was before this act, viz. felony only by the civil law, but giveth a mean of trial by the common law, and inflicteth pains of death, as if they had been attainted of any felony done upon the land. *Coke*, 3. Inſt. Tit. Admir.

The indictment muſt mention the ſame to be done on the high ſea.

If any perſon be feloniouſly ſtricken or poiſoned upon the ſea, or at any place out of *England*, and dies in *England*, or ſtricken or poiſoned in *England*, and dies on the ſea, or out of *England*, the fact is triable in any country, according to the courſe of the common law, except challenges for the hundred. 2 *Geo.* II. Ch. 21.

A pardon of all felonies does not extend to piracy, but the ſame ought *eſpecially* to be named; and though there be a forfeiture of lands and goods, yet there is no corruption of blood, nor can there be an *acceſſary* of this offence tried by virtue of this ſtatute, but if there be an *acceſſary* upon the ſea to a piracy, he muſt be tried by civil law. *Moore* 756. *Dy.* 308. Ditto, P. 71. S. 16. Vide 14 *Jac.* in *B. R.*

The ſtatute of 35 *Hen.* VIII. Cap. 2. taketh not away the ſtatute for treaſons done upon the ſea, nor is clergy allowable to the party on the ſtatute 28 *Hen.* VIII. *Moore* 756. Plac. 1044. 3 Inſt. 112. 1 Inſt. 391.

Though a port be *locus publicus uti pars oceani*, yet it has been reſolved more than once, with reſpect to all ports, that not only the town, but the water is *infrà Corpus Comitatûs*.

If

If a pirate enters into a port or haven of this kingdom, and aſſaults and robs a merchant ſhip at anchor there, this is not piracy, becauſe the ſame is not done *ſuper altum mare*, upon the high ſea, but a downright robbery at common law, for that the act is *infrà Corpus Comitatûs*, and was inquirable and puniſhable by the common law before the ſtatute of 28 *Hen.* VIII. Cap. 15. An inſtance of which was in *Hide & al.* who robbed the ſhip of one Capt. *Slue* of ſome merchandize, appertaining to Mr. *Moſs*, a merchant in *London*, and for which they were indicted at the common law, and found guilty, *Anno* 22 *Car.* II. at the *Old Bailey*. *Molloy* de Jure Mar. P. 71. S. 27.

By the recited act of 11 *Will.* III. it is, amongſt other things, enacted, that all piracies and robberies committed on the ſea, or in any haven or place, where the admirals have power of juriſdiction, may be examined and adjudged, according to the directions of the act, in any place at ſea or land, to be appointed by the king's commiſſion, and alſo, that if any of his majeſty's natural-born ſubjects, or denizens of this kingdom, ſhall commit any piracy or robbery, or act of hoſtility, againſt others of his majeſty's ſubjects on ſea, under colour of commiſſion from any foreign prince or ſtate, or pretence of authority from any perſon, they ſhall be deemed pirates, felons, and robbers, and being convicted according to the ſaid act, or of 28 *Hen.* VIII. therein recited, ſhall ſuffer ſuch pains of death, &c. as pirates, &c. ought to have and ſuffer: And whereas, during the war with *France* and *Spain*, divers ſubjects have entered into the ſervice of his majeſty's enemies, on board privateers, or other ſhips, having commiſſions from the crowns of *France* and *Spain*, and committed hoſtilities againſt his majeſty's ſubjects on the ſeas, in the *Weſt-Indies*, &c. and as doubts have ariſen whether, as ſuch offenders have been guilty of high treaſon, they can be guilty of felony within the intent of the ſaid act, and as ſuch be tried by the court of admiralty thereby appointed; to put an end to the ſaid doubts, therefore, *It is enacted*, That all perſons, being natural-born ſubjects or denizens of his majeſty, who, during the preſent or any future wars have committed, or ſhall commit, any hoſtilities on the ſea, or in any haven, river, creek, or place where the admirals have power of juriſdiction, may be tried as pirates, felons, and robbers, in the ſaid court of admiralty, on ſhipboard, or on land, as perſons guilty of piracy, &c. are by the ſaid act directed to be tried; and being convicted thereof, ſhall ſuffer ſuch pains of death, loſs of lands, goods, and chattels, as other pirates, &c. by the ſaid act of 11 *Will.* III. or any other act, ought to ſuffer. 18 *Geo.* II. P. 659, 660, 661.

Any perſon who ſhall be tried and acquitted, or convicted according to this act, for any of the ſaid crimes, ſhall not be tried again for the ſame fact, as high treaſon.

Nothing in this act ſhall extend to prevent any perſons, guilty of any of the ſaid crimes, who ſhall not be tried according to this act, from being tried for high treaſon within this realm, according to the aforeſaid act of 28 *Hen.* VIII. 18 *Geo.* II. P. 662.

If ſuch a robbery be made in a *creek* or *port*, in ſuch caſes, it has by ſome been conceived that *clergy* is allowable, upon the ſtatute of 28 *Hen.* VIII. but if it be done *ſuper altum mare*, there is no ſuch allowance, as was ruled by the opinion of Sir *Lyonel Jenkyns*, and the reſt of the judges, upon the piracy committed by *Cuſack* and others, who were executed *anno* 1674. And if the robbery be committed on great rivers, within the realm, eſteemed always as common highways, there it has formerly been doubted, whether the benefit of clergy ought to be granted; however it was ſeemingly ſettled by the judges in the aforeſaid caſe of *Hide*, and was confirmed by the following act, viz. *More*, 756. 1 *Jac.* Par. 1044.

Divers wicked and evil-diſpoſed perſons, being encouraged to commit robberies and theft upon navigable rivers, &c. by the privilege, as the law now is, of being admitted to the benefit of their clergy; for the more effectual preventing ſuch felonies for the future, *It is enacted*, That all perſons, who ſhall at any time, from and after the 24th of *June*, 1751, feloniouſly ſteal any goods or merchandize, of the value of 40s. in any ſhip, barge, lighter, boat, or other veſſel or craft, upon any navigable river, or in any port of entry or diſcharge, or in any creek belonging thereto, or from off any wharf or quay adjacent to any navigable river, port of entry or diſcharge, within *Great-Britain*, or ſhall be preſent and aſſiſting in committing any of the ſaid offences, being thereof convicted and attainted, or being indicted, ſhall of malice ſtand mute, or will not directly anſwer to the indictment, or ſhall peremptorily challenge above twenty

perſons

perſons returned to be of the jury, ſhall be excluded from the benefit of clergy. *Geo.* II. P. 1055, 1056.

One *Cobham* was arraigned in *Southwark*, before the commiſſioners of oyer and terminer, for a piracy and robbery committed on a *Spaniard*, and refuſing to plead, it was moved by the attorney-general, whether he ought not in this caſe to have the *peine forte & dure*, and it was the opinion of the court he ſhould from the words, and reaſonable intendment of the ſtatute 28 *Hen.* VIII. C. 15. and judgment was given accordingly.

If a man is taken on ſuſpicion of piracy, and a bill is preferred againſt him, and the *jury* find *ignoramus*, and the court of admiralty will not diſcharge him, that of the *King's-bench* will grant a *habeas corpus*, and if there be good cauſe, diſcharge him, or at leaſt admit him to bail; but if the court ſuſpects that the party is guilty, perhaps they may remand him; and therefore in all caſes, where the admiralty legally have an original or a concurrent juriſdiction, the courts above will be well informed before they will meddle or interfere.

Aiding or aſſiſting the eſcape of a man in cuſtody for piracy, though the matter is an offence at land, yet the admiralty having juriſdiction to puniſh the principal, has likewiſe power to puniſh ſuch an offender, who is looked upon *quaſi* an acceſſary to the piracy; but on reſcuing a priſoner from an officer of their's, they may examine the cauſe, but they cannot proceed criminally againſt the offender. *Yelvert.* 134, 135. *Cro. El.* 685, *Cro. Jac.* 269. *Stiles*, 171, 340.

The exemplification of the ſentence of the court of *admiralty*, under their ſeal, is concluſive evidence in a court of *common law*.

And although the ſtatute of 28 *Hen.* VIII. C. 15. does not alter the offence, or make it felony, but leaves it as it was before that ſtatute, viz. felony only by the *civil law*, and gives a mean of trial by the *common law*, and inflicted ſuch pains of death, as if they had been attainted of any felony; yet it was reſolved by * all the judges and the reſt of the commiſſioners then preſent, that his majeſty having granted letters of repriſal† to Sir *Edmund Turner* and *George Carew*, againſt the ſubjects of the *States General* of the *United Provinces*, which grant was afterwards called in by proclamation, then notified in the treaty of *Breda*, and finally ſuppreſſed under the great ſeal: that ſeveral having put in execution the ſaid commiſſion, under a deputation from *Carew* only, without *Turner*, were indicted for piracy, though they were acquitted, as it was decreed that the ſame was not a felonious and a piratical ſpoliation in them, but a caption in order to an adjudication; and though the authority they acted under was deficient, yet not being done by the captain and his mariners, *animo depredandi*, it could by no means be made piracy. Lord *Raymond*, 893.

It has been cuſtomary to grant commiſſions to the commanders of ſhips bound to the *Eaſt-Indies*, for the ſeizing pirates, and as I find they have always been to the ſame purpoſe, though ſometimes variouſly worded, I ſhall add the copy of one of them taken from the original.

ANNE, R.

"*ANNE*, by the grace of God, queen of *England*, *Scotland*, *France*, and *Ireland*, defender of the faith, &c. to our truſty and well-beloved *A. B.* commander of the ſhip *Triton*, burthen four hundred and twenty tons, thirty guns, and ſeventy men, or to any other the commander of the ſame for the time being, GREETING; *Whereas*, we are informed there are ſeveral pirates and ſea rovers, which do infeſt the ſeas of *India*, whither you are now going, We have therefore thought fit to authoriſe and impower, and accordingly do by theſe preſents authoriſe and impower you, to apprehend, ſeize, and ſecure the perſons of any ſuch pirates, free-booters, and ſea rovers, being either our own ſubjects, or of other nations aſſociated with them, as you ſhall meet with in any of the ports or places, or upon any of the coaſts or ſeas of *India*, or in any other ſeas

* *Seſſ. Admir. Feb.* 18, 1680. Caſe of *Compton Gwilts*, & al. † Mentioned P. 224.

ſeas whatſoever, together with their ſhips and veſſels, and all ſuch merchandize, money, goods, and wares, as ſhall be found on board, or with them, in caſe they ſhall willingly yield themſelves; but if they will not ſubmit without fighting, then you are by force to compel them to yield: And we do alſo require you to bring, or cauſe to be brought, ſuch pirates, free-booters, and ſea rovers, as you ſhall ſeize or take, to a legal trial, to the end they may be proceeded againſt with the utmoſt ſeverity of law. And we do hereby enjoin you to keep an exact journal of your proceedings in the execution of the premiſes, and therein ſet down the names of ſuch pirates, and of their officers and company, and the names of ſuch ſhips and veſſels, as you ſhall, by virtue of theſe preſents, ſeize and take, and the quantities and qualities of all arms, ammunition, proviſion, and lading of ſuch ſhips and veſſels, and the true value of the ſame as near as you can judge, and alſo to ſecure and take care of all *bills* of *lading*, *invoice*, *cockets*, *charter-parties*, and all other papers and writings, of what kind ſoever, as ſhall be found on board ſuch ſhips and veſſels, and we do hereby ſtrictly charge and command you, as you will anſwer the ſame at your utmoſt peril, that you do not in any manner offend or moleſt any of our ſubjects, or the ſubjects of our friends and allies, their ſhips or goods, by colour or pretence of theſe preſents, or the authority hereby granted. In *witneſs* whereof, we have cauſed our great ſeal of *England* to be affixed to theſe preſents. *Given* at our court at *St. James's* the thirteenth day of *October*, 1704, in the third year of our *reign.*"

In the admiral's patent, he has granted to him *bona piratarum*; the proper goods of pirates only paſs by this grant, and not piratical goods. So it is of a grant *de bonis felonum*, the grantee ſhall not have goods ſtolen, but the true and rightful owner: But the king ſhall have the piratical goods, if the owner be not known. 10 Rep. 109. *Dyer* 269. *Jenk.* Cent. 325.

When a pirate is condemned and executed, he is commonly hung in chains on a gibbet fixed by the river ſide, as an object to deter others from following ſuch courſes which might, ſooner or later, bring them to the ſame unhappy end.

During the war, commenced in 1756, ſeveral perſons, maſters of privateers, were executed for piracy; the facts were, that neutral ſhips, *Dutch* and *Danes* were ſtripped in the *Engliſh* channel by ſmall privateers, and plundered, ſometimes by the maſters and people of the privateer diſguiſed, at other times more openly. This occaſioned new act concerning privateers, inſerted under that article.

Of *Convoys* and *Cruizers.*

THE word CONVOY, in a mercantile ſenſe, means a fleet, or any number of merchant-veſſels ſailing together to a particular place of deſtination under protection. And the protection granted to them by the marine department of the ſtate to which they belong, conſiſting of one or more ſhips of war, is likewiſe called a CONVOY.

THE KING OF GREAT-BRITAIN in time of war grants convoys for the protection of his ſubjects carrying on their commerce on the ocean, upon application being made by the merchants to the commiſſioners for executing the office of lord high admiral, who appoint ſuch a force as they think proportioned to the danger they are likely to encounter from the enemy on their voyages; and, even in times of peace, convoys are ordered by the government to guard and defend our trading veſſels from the aſſaults of

pirates,

pirates, or encroachers on our commerce, more eſpecially in our fiſheries, and other parts of the *Weſt Indies*; where they may be expoſed to ſuch attacks by commercial intruders. The ſailing of all convoys is publickly advertiſed, and the days fixed for their departure, that ſhips may get to the rendezvous, or deſtined places, from whence they are to ſet ſail by the times appointed, and there receive orders from the commanding officer relative to their future proceedings, which the maſters muſt take care punctually to obſerve, otherwiſe *they* alone will be anſwerable for any loſs or miſcarriage that may happen through ſuch neglect.

In *France* and other countries, maſters diſobeying the orders of the commanders of convoys, or departing from their convoy, are puniſhed by fine and impriſonment, beſides being reſponſible with their property to their owners for the loſſes that may enſue by ſuch conduct. In *England*, they are only liable to a civil action for damages, to indemnify the owners and merchants, for the ſhips and cargoes captured by their wilful diſobedience; but the difficulties that ariſe in determining when the maſters have made the inſurance void are almoſt innumerable; and fall properly under the head of inſurances, of which hereafter. If the fault lies on the commodore, he is made puniſhable by the ſubſequent law, viz.

The captains, officers, and ſeamen, of all ſhips appointed for convoy of merchant-ſhips or others, ſhall diligently attend upon that charge, without delay, according to their inſtructions; and whoſoever ſhall be faulty therein, and ſhall not faithfully defend the ſhips and goods in their convoy, or ſhall demand any money, or reward, from any merchant or maſter for convoying of ſuch ſhips belonging to his majeſty's ſubjects, ſhall be condemned to make reparation of the damage, as the court of admiralty ſhall adjudge, and alſo be puniſhed criminally by pains of death, or other puniſhment, as ſhall be adjudged by the court-martial. 13 *Car.* II. St. 1. C. 93. S. 1. Art. 1.

Confirmed by 22 Geo. II. *p.* 693. *Art.* 17.

By the treaty with *Holland* in 1667, it is ſtipulated, that the men of war or convoys of either nation, meeting or overtaking at ſea any merchant-ſhip or ſhips belonging to the ſubjects or inhabitants of the other, holding the ſame courſe, or going the ſame way, ſhall be bound, as long as they keep one courſe together, to protect and defend them againſt all and every one who would ſet upon them.

CRUIZERS are commonly the beſt ſailing ſhips, appointed by the admiralty to cruize in ſome certain latitudes, in order to meet with, and apprehend, or deſtroy the enemy; they are generally of the ſmalleſt rates, and muſt by no means leave their ſtations during the time limited, except forced thereto by ſome damage received, or by ſtreſs of weather. By the 6 *Ann.* Cap. 13. it was *enacted*, that beſides the line of battle ſhips, forty-three others ſhould be employed as cruizers and convoys for the better preſervation of trading veſſels; *four* of which were to be third rates; *ſixteen* fourth rates, and the reſt of ſufficient force to guard our commerce; they were to attend, as before-mentioned, in certain ſtations, and the commiſſioners of the admiralty may direct thoſe of the navy, or ſome one or more perſons, reſident at ſuch places as his majeſty ſhall appoint, to ſuperintend and overſee every thing relating to thoſe cruizers.

Several ſubſequent acts have confirmed the above, and increaſed the number of cruizers as neceſſity has required, to the no ſmall ſecurity of our maritime intereſt.

Having now deſcribed the different modes of attacking an enemy at ſea under proper authority, it follows in order, that we ſhould treat of the conſequence of ſucceſs, under the articles

Of

Of *Captures*, *Condemnations*, and *Appeals*.

I Have already had occaſion to mention ſeveral circumſtances concerning *prizes*, under the preceding articles of letters of marque, &c. however, ſhall add a few more here, and begin with the diſtinctions made concerning them, which are of three ſorts, viz.

1. Ships and goods taken by letters of marque, and by *jus repriſaliarum*.
2. Thoſe taken from pirates or ſea rovers; and
3. Thoſe taken from profeſſed enemies.

The firſt, as has been before-mentioned, belong entirely to the captors, after a legal condemnation, as the ſecond does after an account thereof is given to the admiral, and the third were to be proceeded in, according to the power which authorized the capture. *Molloy* P. 280. S. 17.

It has been alſo granted to companies, to appropriate the prizes made in conſequence of an infringement of their charters; as to the *Eaſt India**, who have a right to all ſhips, &c. trading within their limits, for which they may ſue in any of the courts at *Weſtminſter*; as that of the *South Sea* may, though their grant is yet more ample, viz. The company ſhall have all ſhips and goods which ſhall be taken as prize, by the ſhips employed or licenſed by it, within their limits, or by ſuch ſhips of her majeſty, as ſhe ſhall allow for defence of the trade, without any account, ſave only that the officers and ſeamen on board the ſaid ſhips of her majeſty, which ſhall be aſſiſting to the taking any ſuch ſhips or goods as prize, ſhall have ſuch ſhare thereof as her majeſty ſhall direct by the charter of incorporation; and it ſhall be lawful for the company and their ſervants, and other perſons employed and licenſed by them, to ſeize by force of arms, the perſons, ſhips, goods, or effects, of any of the ſubjects of her majeſty, who ſhall frequent, trade, or adventure into the *South Seas*, or other the limits aforeſaid, and to detain, to the uſe of the company, the ſhips, goods, and effects, ſo ſeized, and to ſend into *Great Britain* the perſons of ſuch of the ſubjects of her majeſty as ſhall be ſo ſeized, in order to their being proſecuted according to law. 9 *Ann.* Cap. 2. S. 51.

It has been obſerved in a preceding part of this work, that no prize can be diſpoſed of, nor any of her cargo touched, till after a legal condemnation in the court of admiralty here, or elſewhere; and that no delays be made in the proceſs, it is *enacted*, that the judge of ſuch court ſhall, if requeſted thereto, finiſh within five days, &c. 13 *Geo.* II. P. 133. See P. 230, 231.

APPEALS from the vice-admiralty courts in *America*, and our other plantations and ſettlements, may be brought before the court of admiralty in *England*, as being a branch of the lord high admiral's juriſdiction, though they may alſo be brought before the king in council. But in caſes of prize-veſſels taken in time of war, in any part of the world, and condemned in any court of admiralty or vice admiralty as lawful prize, the appeal lies to the *commiſſioners of appeals*, and not to judges delegates. And this by virtue of divers treaties with foreign nations, by which particular courts are eſtabliſhed in all the maritime countries of *Europe* for the deciſion of ſuch queſtion, *Whether lawful prize or not?* For this being a queſtion between ſubjects of different ſtates, it belongs entirely to the law of nations, and not to the municipal laws of either country, to determine it. The original court for deciding this queſtion in *England* is the court of admiralty; and the court of appeal is in effect the king's privy council, the members of which are, in conſequence of treaties, commiſſioned under the great ſeal for this purpoſe.

The commiſſioners of appeals, formerly appointed by our ſovereigns, were half their privy counſellors, and ſome others mentioned in the appointment, to whom appeals were

* 7 *Geo.* I. Cap. 21. Sect. 1; 3 *Geo.* II. Cap. 14. Sect. 9.

were to be made, both at home and abroad, as above; but as ſome difficulties aroſe about the commiſſion, the following act was made to remedy and ſolve them, viz.

His majeſty, in order to bring appeals from ſentences in cauſes of prizes, pronounced in the courts of admiralty, to a ſpeedy determination, did, by his commiſſion, bearing date the 11th of *July*, in the twenty-ſecond year of his reign, revoke a former commiſſion granted to all his majeſty's then privy counſellors, and all other his privy counſellors for the time being, during pleaſure; and did alſo, by the ſame commiſſion, appoint all his privy counſellors then being, as alſo Sir *Thomas Parker*, knight, lord chief baron of the *Exchequer*; Sir *Martin Wright*, Sir *Thomas Denniſon*, and Sir *Michael Foſter*, knights, juſtices of the court of *King's Bench*; Sir *Thomas Abney*, Sir *Thomas Burnet*, and Sir *Thomas Birch*, knights, juſtices of the court of *Common Pleas*; *Charles Clark*, *Edward Clive*, and *Heneage Legge*, Eſqrs. barons of the court of *Exchequer*, and the chief baron of the *Exchequer* for the time being, to be commiſſioners, for hearing and determining ſuch appeals, during pleaſure, &c. and as ſome objections have been raiſed againſt the laſt-mentioned commiſſion, on account of the lord chief baron of the *Exchequer*, the juſtices of the *King's Bench* and *Common Pleas*, and the barons of the *Exchequer*, who were not of the privy council, being joined therein; *It is therefore enacted*, That the ſaid commiſſion, and all the powers granted therein, ſhall be deemed good in law; and the commiſſioners, as well the ſaid lord chief baron, and the ſaid juſtices and barons therein named, and the lord chief baron of the *Exchequer*, and the juſtices of the *King's-Bench* and *Common Pleas*, and the barons of the *Exchequer* for the time being, although they ſhould not be of the privy council, are impowered, during his majeſty's pleaſure, to receive and determine all ſuch appeals, and to uſe all other juriſdictions, according to the true intent of the ſaid commiſſion.

No ſentence upon the hearing of any ſuch appeal ſhall be valid, unleſs a majority of the commiſſioners preſent be of the privy council.

Of *Bills* of *Health* and *Quarantine*.

THE dreadful ravages made by peſtilential diſorders in thoſe countries moſt ſubject to them, makes every prince and ſtate fearful of receiving the infection, by the admiſſion of goods from ſuſpected places; and, to avoid it, they always inſiſt on ſhips bringing certificates from the magiſtracy of the port they laſt came from, declaring their country to be free from any contagious diſtemper: Theſe are termed bills of health, of which copies are annexed, and, coming in this form, they are called *clean* ones, in oppoſition to *foul* ones, which are given to ſhips when they proceed from infected places, and theſe always obſtruct their admittance to trade, till they have performed a quarantine of as many days as the guardians of health, where they arrive, may judge neceſſary, being commonly from ten to forty; on expiration of which, it is cuſtomary abroad for phyſicians to examine the ſhip's crew, and ſtrict ſearch is made on board, by perſons appointed, to ſee whether the number of ſailors correſpond with thoſe mentioned in the bills of health; and, if any difference appears, it will be difficult in any country, and impoſſible in ſome, to obtain admiſſion afterwards; therefore it behoves every captain to be very circumſpect in having the exact number of his company inſerted.

But though the ſailors are not admitted to a communication with the ſhore, till the aforementioned prudent precautions have preceded; yet all commodities, unſuſceptible of the infectious taint, ſuch as corn, &c. are permitted immediately to be landed at pro-

per

per places by the mariners, from whence they are afterwards conveyed to thoſe deſtined for their conſumption or ſale.

Several foreign ſtates have ſet apart and appropriated certain parcels of lands for the aforementioned purpoſes, which they have encloſed, and erected buildings, both for the reception of goods and paſſengers, to lay their quarantine in, where the latter are comfortably accommodated, under the vigilance of guards, appointed to hinder any one's too near approach to theſe recluſes: Such are the *Lazarettos* at *Marſeilles*, *Venice*, &c. and the expences vary on theſe occaſions, according to the difference of climes and accommodations.

All ſhips performing quarantine here do it at *Stangate* Creek, under ſuch regulations as his majeſty in council is pleaſed to appoint; and every merchant who had any goods from *Italy*, during the laſt plague at *Meſſina*, was obliged to ſhew his documents, that is, the bills of lading, invoices, letters, or any other papers in which his goods were mentioned, to gentlemen in the ſecretary of the cuſtoms' office, appointed to examine them; and the merchandize, after lying the time ordered, was opened, aired and underwent the appointed ſearch, before it was permitted to be put into lighters, and brought to *London*, &c.

But the frequency of the plague in different parts of the *Levant*, making a reviſal of thoſe laws neceſſary, the following act was paſſed:

The Preamble ſets forth, that whereas it is neceſſary ſome proviſion be made by parliament, for obliging ſhips and perſons coming from places infected, or frequently ſubject to the plague, to perform quarantine in ſuch manner as ſhall be ordered by his majeſty, or his ſucceſſor; and for puniſhing offenders therein in a more expeditious manner than can be done by the ordinary methods of law: *It is therefore enacted*, that all ſhips and veſſels arriving, and all perſons, goods, and merchandizes, coming or imported into any port or place within *Great-Britain* or *Ireland*, the iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Man*, or from any place from whence his majeſty or his ſucceſſors, by advice of the privy council, ſhall judge it probable that the infection may be brought, ſhall be obliged to perform quarantine in ſuch place, and in ſuch manner, as ſhall be directed by his majeſty or his ſucceſſors, by order in privy council, and notified by proclamation, or in the *London Gazette:* And that, till ſuch ſhips, &c. ſhall be diſcharged from ſuch quarantine, no perſon, goods, &c. ſhall be brought on ſhore, or be put on board any other veſſel, within his majeſty's dominions, unleſs by licence, as ſhall be directed by order of council: And that all ſuch ſhips, and the perſons or goods, coming or imported, or going or being put on board the ſame, and all ſuch ſhips, veſſels, boats, and perſons, receiving any goods or perſons out of the ſame, ſhall be ſubject to ſuch orders, rules, and directions, concerning quarantine and the prevention of infection, as ſhall be made by his majeſty and his ſucceſſors in council, and notified by proclamation, or publiſhed in the *London Gazette*, as aforeſaid. 26 *Geo.* II.

If the plague ſhall appear on board any ſhip to the northward of *cape Finiſterre*, the maſter ſhall immediately proceed to the harbour of *New Grimſby*, in the Iſles of *Scilly*, where he ſhall inform the officer of the cuſtoms there of his caſe, who ſhall acquaint ſome officer of a near port of *England* thereof; who, with all poſſible ſpeed, ſhall ſend intelligence thereof to one of his majeſty's ſecretaries of ſtate, that ſuch meaſures may be taken for the ſupport of the crew, and ſuch precautions uſed to prevent the ſpreading of the infection, as the caſe ſhall require: And the ſaid ſhips ſhall remain at the Iſlands of *Scilly* till his majeſty's pleaſure be known, nor ſhall any of the crew go on ſhore: But if the maſter ſhall not be able to make the Iſlands of *Scilly*, or ſhall be forced by ſtreſs of weather up either of the channels, he ſhall not preſume to enter into any port, but ſhall remain in ſome open road till he receives orders from his majeſty, or the privy council; and ſhall take care to prevent any of his ſhip's company from going out of his ſhip, and to avoid all intercourſe with other ſhips or perſons; and the ſaid maſter, or any perſon on board ſuch ſhip, who ſhall be diſobedient therein, ſhall be adjudged guilty of felony, and ſhall ſuffer death as a felon, without benefit of clergy: And every ſuch offence ſhall be determined in the county where the offence ſhall be committed, or where the offender ſhall be apprehended.

That it may be better known whether any ſhip be actually infected with the plague, or whether ſuch ſhips, &c. are liable to any orders touching quarantine, *It is enacted*, that when any place is infected with the plague, or when any order ſhall be made con-

cerning quarantine and the prevention of infection, as often as any ſhip ſhall attempt to enter any place in *Great-Britain* or *Ireland*, &c. the principal officer of the cuſtoms in ſuch place, or ſuch perſon as ſhall be authorized to ſee quarantine performed, ſhall go off, or cauſe ſome other perſon, appointed by him for that purpoſe, to go off to ſuch ſhip; and ſuch officer, &c. ſhall, at a convenient diſtance from ſuch ſhip, demand of the maſter, and the maſter ſhall, upon ſuch demand, give a true account of the following particulars; that is to ſay, the name of ſuch ſhip, the name of the maſter, where the cargo was taken in, where ſhe touched, whether ſuch places were infected, how long ſhe had been in her voyage, how many perſons were on board when ſhe ſet ſail, whether any in the voyage had been or were then infected with the plague, how many died in the voyage and of what diſtemper, what ſhips he, or any of his ſhip's company with his privity went on board, or had any of their company come on board, during the voyage, and to what place ſuch ſhips belonged; and alſo the true contents of his lading, to the beſt of his knowledge. And if it ſhall appear that any perſon on board ſhall be infected with the plague, or that ſuch ſhip is obliged to perform quarantine, in ſuch caſe it ſhall be lawful for the officers of any of his majeſty's ſhips of war, or any forts or garriſons, and all other officers whom it may concern, and for any other perſons whom they ſhall call for their aſſiſtance, to oblige ſuch ſhip to repair to ſuch place as hath been appointed for performance of quarantine, by any kind of violence whatſoever. And if any ſuch ſhip ſhall come from an infected place, or have any perſon on board actually infected, and the maſter ſhall conceal the ſame, ſuch maſter ſhall be adjudged guilty of felony, and ſhall ſuffer death: And if the maſter of ſuch ſhips ſhall not make a true diſcovery in any other of the aforeſaid particulars, ſuch commander ſhall forfeit 200l. one moiety to the king, the other to the perſon who ſhall ſue for the ſame.

The maſter of any veſſel ordered to perform quarantine ſhall, after his arrival at the place appointed for performing quarantine, deliver to the chief officer there ſuch bills of health and manifeſt as he ſhall have received from any *Britiſh* conſul during his voyage, together with his log-book and journal, under penalty of 500l. forfeiture, in the ſame manner as the laſt clauſe.

If any maſter of a veſſel liable to perform quarantine, having notice thereof, ſhall himſelf quit, or permit any other perſon to quit ſuch veſſel, before quarantine ſhall be performed, unleſs by proper licence; or in caſe any maſter ſhall not cauſe, within due time after notice given, ſuch veſſel, and the lading thereof, to be conveyed to the place appointed for performing quarantine; then, and in every ſuch caſe, the maſter ſhall forfeit 500l. and the perſons quitting the veſſel ſhall be compelled to go back, and ſuffer ſix month's impriſonment, and each forfeit 200l. The penalties to be recovered and divided as before.

His majeſty, with the conſent of parliament, may erect lazarets on any common or private grounds; and in caſe any difference ſhould ariſe about the value of ſuch lands, to be ſettled by a jury at the quarter-ſeſſions.

The proper officers are impowered and required to compel all perſons obliged to perform quarantine, and goods, to be conveyed to ſome lazaret, or ſuch other place as ſhall be provided for the reception of ſuch perſons, goods, &c. or for the opening and airing ſuch goods, &c. according to ſuch orders to be made as aforeſaid.

If any perſon, obliged to perform quarantine, ſhall refuſe or neglect to repair to the houſe of lazaret, or having been placed therein, ſhall attempt to eſcape before quarantine be fully performed; any of the perſons appointed to ſee quarantine performed, may compel them to repair or return to the houſe, &c. appointed; and every perſon ſo refuſing, or neglecting, or eſcaping, ſhall ſuffer death as a felon.

All perſons liable to perform quarantine, whether in ſhips, lazarets, or elſewhere, ſhall be ſubject, during ſuch quarantine, to ſuch orders as they ſhall receive from the proper officers; and the ſaid officers are to enforce all neceſſary obedience to their orders, and may in caſe of neceſſity, call in other perſons to their aſſiſtance; and all perſons called are required to aſſiſt.

If any perſon, not liable to perform quarantine, ſhall enter any lazaret, &c. whilſt any perſons under quarantine ſhall be therein, ſuch perſon ſhall be confined there to perform quarantine by the proper officers: And, in caſe he ſhall eſcape out of the lazaret, ſhall be guilty of felony, and ſuffer death accordingly.

If

If any officer, appointed to execute any orders made concerning quarantine, ſhall be guilty of any wilful breach or neglect of his duty, ſuch perſon ſhall forfeit his employment, and one hundred pounds, and be incapable of holding ſuch office for the future.

All goods liable to retain infection, as ſhall be particularly ſpecified in any orders made concerning quarantine, which ſhall be imported into any of his majeſty's dominions from any foreign country, in any ſhip whatſoever, ſhall be liable to ſuch orders made concerning quarantine.

After quarantine ſhall have been duly performed, upon proof to be made on oath, by the maſter and two other perſons belonging to the veſſel, or of two or three credible witneſſes, to be made before the cuſtomer, comptroller, or collector of the port, or the next port, where quarantines ſhall be performed, or before any of their deputies, or any juſtice of the peace living near ſuch port, or, if in the iſles of *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Man*, before any two jurats or magiſtrates, that ſuch veſſel, and all and every ſuch perſons, are free from infection; and after producing a certificate, ſigned by the chief officer who ſuperintended the quarantine of that ſhip, then ſuch cuſtomer, &c. are required to give a certificate thereof; and thereupon ſuch ſhip, and all perſons belonging to her, ſhall be liable to no further reſtraint or detention upon the ſame account for which quarantine ſhall have been performed.

The officer neither for oath nor certificate ſhall take any fee or reward.

Provided nevertheleſs, that all goods, wares, and merchandize, ſhall be opened and aired as ſhall be directed in the order for quarantine; and, after ſuch orders have been duly complied with, the goods ſhall be diſcharged, with a proper certificate, in the ſame manner as the ſhip, &c.

Any officer that ſhall demand or take any fee, to forfeit one hundred pounds, with treble coſts of ſuit.

If any perſon, appointed to ſee quarantine duly performed, or placed as a watchman upon any houſe, lazaret, ſhip, or other place for performance of quarantine, ſhall deſert from their duty, or wilfully permit any perſon, ſhip, goods, or merchandizes, to depart, or be conveyed out of ſuch houſe, &c. or if any perſon give a falſe certificate of a ſhip's having duly performed her quarantine or airing, every ſuch perſon ſhall ſuffer death as a felon.

If any perſon ſhall conceal from the officers of quarantine, or convey any letters, goods, wares, or merchandiſes from any ſhip under quarantine, or liable to perform quarantine, or from any lazaret, &c. where goods ſhall be performing quarantine, every ſuch perſon ſhall ſuffer death.

When any part of *Great-Britain*, *Ireland*, *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Man*, or *France*, *Spain*, *Portugal*, or the *Low Countries*, ſhall be infected with the plague, his majeſty, by proclamation, may prohibit all boats and veſſels under 20 tons burden, from ſailing out of any place in *Great-Britain*, &c. until ſecurity be firſt given by the maſter, to the ſatisfaction of the principal officer of the cuſtoms, or chief magiſtrate of the place from whence ſuch veſſel ſhall ſail, by bond, with ſufficient ſureties, in the penalty of 300l. with condition, that if ſuch veſſel ſhall not touch at any place mentioned in the proclamation; and if the maſter, mariners, and paſſengers do not go on board any other veſſel at ſea, and if ſuch maſters ſhall not permit any perſons to come on board from any other veſſel, and ſhall not receive any goods, &c. out of any other veſſel, then ſuch bond ſhall be void; if any veſſel ſhall go before ſuch ſecurity be given, every ſuch veſſel with her tackle, apparel, and furniture, ſhall be forfeited to the king, and may be ſeized; And the maſter and every mariner, upon the oath of a credible witneſs before a juſtice of peace, where ſuch offenders ſhall be found, ſhall forfeit the ſum of twenty pounds, one moiety to the informer, the other to the poor of the pariſh, where ſuch offenders ſhall be found; the ſame to be levied by diſtreſs, and ſale of the offender's goods, by warrant under the hand and ſeal of the juſtice before whom ſuch offender ſhall be convicted: And for want of ſufficient diſtreſs, the offender to be ſent to priſon for three months.

By this act, the place of quarantine is changed from *New Grimſby*, and appointed at *St Helen's Pool*, between the uninhabited iſlands of *St. Helen's Jean* and *North Withell*, in the iſland of *Scilly*, or to ſuch other place as his majeſty, with the advice of his privy council ſhall appoint. 29 *Geo.* II.

The

The following is the form of an *Engliſh* bill of Health, which is given at the *Cuſtom-houſe*, ſigned by the benchers, and coſts five ſhillings, viz.

" OMNIBUS Chriſti fidelibus, ad quos præſentes Literæ pervenerint, nos Miniſtri ſereniſſimi principis Domini noſtri GEORGII *Tertii* Regis in portu civitatis *Londini* Salutem.—Cùm pium ſit ac honeſtum veritati teſtimonium perhibere, ne error & deceptio præjudicii ipſam opprimat: Cumque navis nuncupata
cujus nauclerus ſub Deo eſt
quæ jam parata eſt a portu dictæ civitatis *Londini* diſcedere & ab hinc Deo volente pro
& alia loca tranſmarina cum in eâdem
nave adpellere; hinc quód univerſitati veſtræ tenore præſentium innoteſcimus fidemque indubitam facimus, quód, Deo optimo maximo ſumma laus attribuatur, in hâc dictâ civitate nulla Peſtis, Plaga, nec Morbus aliquis periculoſus, aut contagioſus, ad præſens exiſtit. In cujus rei teſtimonium ſigillum officii noſtri apponi fecimus. Datum hoc In regio telonio civitatis *Londini* predictæ
anno ſalutis Chriſtianæ ſecundúm computationem Eccleſiæ *Anglicanæ* milleſimo ſeptingenteſimo annoque regni dicti ſereniſſimi Domini noſtri GEORGII *Tertii* Dei gratiâ *Magnæ Britanniæ*, &c. *Fidei Defenſoris*, &c."

The ſubſequent is copied from a bill of Health, given at *Alicant* in *Spain*, being the ſame with thoſe of all the other parts of that kingdom; and differing only in form, from thoſe of *Italy* and other parts, this duplicate may ſuffice to ſhew the nature and contents of them all.

" UNIVERSIS cujuſvis auctoritatis ſalutem in Domino; nos regimen illuſtris civitatis Alicantis, & Villæ de Muchamel. Teſtamur, quod dicta civitas et villa, Deo auſpice, optimâ gaudent ſalute, & nullius contagioſi morbi veſtigio inficiuntur; & fidem facimus à noſtro portu diſcedere navem nominatam cujus dux eſt
cum nautis, & prout aſſervit
viam dirigit verſus quare oramus ut illa ejuſque nautæ, ſimul cum mercibus, abſque dubio de valetudine perſonarum, & locorum unde veniunt, recipiantur. In quorum fidem has noſtras Literas manu Scrivæ noſtri firmitas & ſigillo Mayori noſtræ civitatis munitas illi concedimus. Datis *Alicantis*, Die
Menſis anno à Nativitate Domini."

Pro illuſtri & ſepter fideliſſimâ civitate Alicantis.

N. P.

Of Embargoes or Reſtraints of Princes.

AN embargo is commonly underſtood to be a prohibition of ſhips ſailing on the breaking out of a war, to hinder their giving any advice to the enemy; but it has a much more extenſive ſignification; as they are not only ſtopped from the aforementioned motives, but are frequently detained to ſerve a prince in an expedition; and for this

this have often their lading taken out, if a ſufficient number of empty ones are not procurable to ſupply the ſtate's neceſſity, and this without any regard to the colours they bear, or whoſe ſubjects they are; ſo that it frequently happens, that many of the *European* nations may be forcibly united in the ſame ſervice, at a juncture that moſt of their ſovereigns are at peace and in amity with the nation againſt which they are obliged to ſerve.

Some have doubted of the legality of the thing, but it is certainly conformable to the law both of nature and nations, for a prince in diſtreſs to make uſe of whatever veſſels he finds in his ports, that are fit for his purpoſe, and may contribute to the ſucceſſes of his enterprizes; but under this condition, that he makes them a reaſonable recompence for their trouble, and does not expoſe either the ſhips or men to any loſs or damage.

An embargo laid on ſhips and merchandiſe in the ports of *Great-Britain* by virtue of the king's proclamation is ſtrictly legal, when the proclamation does not contradict the old laws, to tend to eſtabliſh new ones; but only to enforce the execution of ſuch laws as are already in being, in ſuch manner as the king ſhall judge neceſſary: Thus the eſtabliſhed law is, that the king may prohibit any of his ſubjects leaving the realm: A proclamation therefore forbidding this in general for three weeks, by laying an embargo upon all ſhipping in time of war, will be equally binding as an act of parliament, becauſe founded upon a prior law. *Blackſtone's Comment.* Vol. I. p. 270.

But beſides embargoes in time of war, there are others of a ſpecial nature, which ſometimes ariſe from a very extraordinary emergency in time of peace, and which are founded upon *State Neceſſity*, or the *Salus Populi*; yet the proclamations by which they are laid may be illegal, contradicting an eſtabliſhed law. This was the caſe reſpecting the embargo to prevent the exportation of corn in 1766; ſuch exportation being allowed by law at the time; and therefore the preamble to the ſtat. 7 *Geo.* III. C. 7. for indemnifying all perſons adviſing or acting under the order of council, laying an embargo on all ſhips laden with corn or flour, "during the receſs of parliament in 1766, *ſays* which order *could not be juſtified by law*, but was ſo much for the ſervice of the publick, and ſo neceſſary for the ſafety and preſervation of his majeſty's ſubjects, that it ought to be juſtified by act of parliament." This embargo, as was allowed, ſaved the people from famine; yet it was declared *illegal* by the above act of the legiſlature, including the king himſelf who laid it, which was therefore needful to ſanctify it; and the proprietors of the embargoed ſhips and cargoes were accordingly indemnified by government.

Of *Protections*, *Paſſports*, and *Safe-Conducts*.

PASSPORTS are commonly granted to friends, and SAFE-CONDUCTS to enemies, though cuſtom has made the meaning of thoſe terms to be much the ſame in this place: In a military treatiſe they would be differently conſtrued; but they only ſignify here that protection a prince affords to either ſhips or men againſt the aforementioned embargoes, or his granting to ſome individuals a leave to trade, denied to others, or his permiſſion for them to come into his kingdom while a general prohibition ſubſiſts, and ſometimes even during a war with the ſtate whoſe ſubjects they are.

This has often happened in our diſputes with *Spain*, where our ſhips went currently in the beginning of the war commenced in 1718, and on many other occaſions, under the protection of a paſs, which his Catholick majeſty granted to ſeveral, and which ſerved

ſerved for one voyage: Theſe paſſes had blanks left for the names of ſhips, captains, &c. and at firſt coſt about twenty dollars; though, when a ſtop was put to granting any more, their price roſe in proportion to their ſcarcity; and the few who had any remaining, made a very conſiderable advantage of them: The ſame has been practiſed by many of our former kings, and confirmed by ſeveral ſubſequent acts, viz.

In all ſafe-conducts to be granted to any perſons, the names of them, of the ſhips, and of the maſters, and the number of the mariners, with the portage of the ſhips, ſhall be expreſſed. 15 *Hen.* VI. C. 3.

Merchants aliens may lade ſhips of *Spain*, and other parts, adverſaries and enemies of the king, if the maſters or merchants of ſuch ſhips have letters patent of the king of his ſafe-conduct, making mention of the name of the ſhips, and of the maſters: and if any ſuch ſhip charged with ſuch merchandizes of ſuch merchants be taken upon this ſea, by the king's people, not having the king's letters patent within the board of ſuch ſhips at the day of the taking, nor that ſuch letters patent be in the chancery inrolled, the takers may enjoy the ſame. 18 *Hen.* VI. C. 8.

All letters of ſafe-conduct to be granted to the king's enemies, or others, ſhall be inrolled in chancery, before ſuch letters be delivered; and all letters of ſafe-conduct, not inrolled before delivery, ſhall be void. 20 *Hen.* VI. C. 1. S. 2.

If any goods be taken by the ſubjects of the king upon the ſea, charged in any ſhip belonging to enemies, not having letters of ſafe-conduct inrolled, they that take the goods ſhall them enjoy. S. 3.

The ſubjects taking ſuch ſhips, not having letters of ſafe-conduct within the ſaid ſhips, and bringing them within the realm, ſhall not be endamaged for ſuch taking, if they be ready to make reſtitution, within reaſonable time after knowledge is made to them of the letters of ſafe-conduct, enrolled in chancery before the taking. S. 4.

If any ſubjects attempt to offend upon the ſea, or in any port under the king's obedience, againſt any ſtrangers in amity, league, or truce, or by ſafe conduct, the chancellor ſhall have authority to cauſe ſuch perſon to be delivered, and the goods or ſhip taken to be reſtored, &c. 31 *Hen.* VI.

If any perſon ſhall, within his majeſty's dominions, or without, falſely forge or counterfeit any paſs for any ſhip, commonly called a *Mediterranean* paſs, or ſhall alter or eraſe any paſs made out by the commiſſioners for executing the office of lord high admiral; or ſhall publiſh as true any forged, altered, or erazed paſs, knowing the ſame to be forged, &c. every ſuch perſon, being convicted in *Great Britain* or *Ireland*, or his majeſty's plantations, where ſuch offence ſhall be committed, ſhall be guilty of felony without benefit of clergy. 4 *Geo.* II. C. 18. S. 1.

There was formerly appointed in theſe realms a conſervator of *ſafe-conducts*, and as the ſame perſon had alſo the care of *truces*, it naturally leads me to treat of them.

Of *Leagues* and *Truces*.

LEAGUES or TRUCES are either with enemies, friends, or neuters, and thoſe made with the former are for a *limited time*, or *perpetual*.

Perpetual is where peace finiſhes all diſputes, and reſtores a perfect amity between the contracting parties.

And treaties for a time are termed TRUCES, which are alſo *general* or *particular*.

General truces include all the States of both princes, in regard to their ſubjects and commerce; whilſt *particular ones* are only for certain places, or certain perſons, with a limita-

a limitation of their trade, and ſometimes go no farther than a bare ſuſpenſion of arms.

A *Truce*, however, whether *general* or *particular*, is an agreement on a ceſſation of all hoſtilities during the time ſtipulated, and ought not to be infringed or broken on any account: *It* frequently is a parent of peace, as it allows room for conſideration, and to treat of it; and, beſides, affords opportunity for ſettling the jarring intereſts of princes, who are to be comprehended in it.

A *general Truce* is ſometimes ſettled for ſo long a term as to become equal to a peace; and ſuch are commonly made betwixt princes equal in power, who are unwilling to quit any thing of their ſuppoſed right by peace, and yet deſire to live quietly in their preſent ſtate, and by this medium ſatisfy their point of honour. Such truces are likewiſe, from the foregoing conſiderations, leſs ſubject to a breach than a peace that is made perpetual, as princes, who by this latter find themſelves aggrieved, will ſeek out plauſible reaſons to forſake or evade it; but in the other, when the limited time is expired, they have only to renew or excuſe it.

Some alliances are contracted for an enterprize, and for one ſole effect, in that part in which the allies are intereſted; and theſe are generally called *leagues*, and have been ſometimes here confirmed by *act of parliament*, and are ſuch agreements as are always made by command of the ſupreme power; and theſe, as well as *ſafe-conducts*, are or ought to be of record, that is, inrolled in chancery, that the ſubjects may know who are friends, and can have actions perſonal here, or who the contrary, and can have none. *Rot. Parl.* 4 *H.* V. Numb. 4; *Coke*, 4 Inſtit. 156.

Leagues commonly are *offenſive*, and the ordinary cauſes for which princes and republicks make them are either to facilitate a conqueſt, or to balance the power of an ambitious and enterpriſing neighbour; ſuch were thoſe entered into againſt the opulency and growing greatneſs of the *Spaniards*, and ſince in oppoſition to the attempts of *Lewis* XIV. to acquire univerſal monarchy. 4 Inſtit. 152.

But though leagues are generally *offenſive*, yet many are confined only to the *defenſive* part, and theſe entered into with the ſole view of guarding againſt the ſiniſter intentions or attempts of any vicinal power, of which I might produce many inſtances; but as what I have already ſaid on the ſubject may ſuffice for a place in a mercantile treatiſe, I ſhall not intrude any farther on my reader's time or patience by enlarging on it, but proceed to the articles.

Of *Proclamations* for *War* and *Peace*.

THE proclaiming of war, or ſettling of peace, is one of the royal prerogatives belonging to the kings of *Great Britain*; but though it has always been exerciſed by them, yet they have ſeldom failed to aſk the advice of parliament in both caſes, and generally war or peace are approved and confirmed by parliament. Moreover, if the conditions of peace are found to be diſhonourable or diſadvantageous to the nation by a majority of the repreſentatives of the people in parliament, or of the peers, an impeachment will lie againſt the miniſters who have adviſed them; for the king can do no wrong. And the ſame courſe may be taken when the nation is improperly plunged in a war by the mal-adminiſtration of the king's ſervants. There are two methods of engaging in a war with a foreign ſtate; the firſt, and the moſt honourable is by a ſolemn declaration publickly proclaimed, copies of which are ſent off to all the Britiſh ambaſſadors, miniſters, and conſuls, reſiding in the different countries, and at the courts of all foreign princes. This ſerves as a general notice of the rupture between the

the two powers being irreconcileable by negociation, and prepares the ſubjects of each ſtate, ſo that they may regulate their commercial concerns accordingly. This practice is founded on the law of nations, and uſed formerly to be one of the criterions by which we diſtinguiſhed a civilized people from barbarians.

At preſent, a fatal change in the ſyſtem of politics has taken place; and the European powers make no ſcruple of going to war, without making the uſual proclamations, to the great injury of their ſubjects, who may entertain hopes of a reconciliation of differences, ſo long as ſuch declarations are ſuſpended, and may venture their property on the ocean, under the ſanction of peace, not imagining that privateers and ſhips of war will be authorized to ſeize them prior to a declaration of war. No nation can properly juſtify this conduct, and poſterity will load with reproaches the names of thoſe ſtateſmen, whether *Spaniſh*, *French*, or *Britiſh*, who firſt brought this foul practice into uſe.

It was uſual by declarations of war to cut off all intercourſe with the enemies of our country; but ſince the late cuſtom of going to war without any publick proclamation, intercourſes have been carried on highly detrimental to publick affairs, by thoſe who perhaps did not look upon themſelves as traitors to their king and country, whereas if a proclamation had declared ſuch correſpondence to be treaſonable, they would not have carried it on.

War and peace are always proclaimed by the herald at arms, accompanied by proper notaries and a body of the life-guards and when they enter the city of *London*, they are joined by ſome of the city officers: The proclamation is read by the notaries to the herald, who repeats it, all being bare-headed, firſt at *St. James's*, then at *Charing-Croſs*, *Temple-Bar*, *Cheapſide*, and the *Royal-Exchange*.

When war is proclaimed, it is cuſtomary to prohibit, though not always, all commerce with the enemy, by interdicting the entrance of any of the commodities of his country into our's, as was done in the war with *Spain* in 1740, by the following act of parliament, viz.

The preamble ſets forth that the repeated inſults, depredations, and cruelties of the *Spaniards* had obliged his majeſty to make uſe of the power which God had given him, to vindicate the honour of his crown, and ſecure to his ſubjects their undoubted rights and privileges of navigation and commerce; and in order thereto, his majeſty, on juſt and honourable grounds, had thought fit to declare war with *Spain*; and it being highly requiſite to prohibit all commerce between his majeſty's ſubjects, and thoſe of *Spain* in *Europe*, and to enforce ſuch prohibitions by ſevere penalties, *It is enacted*, that from and after the firſt day of *June*, 1740, no goods whatever, of the growth or manufacture of *Old Spain*, lying in *Europe*, or of the *Canary Iſlands*, except goods taken and condemned as lawful prize, and ordered to be ſold as periſhable, during the preſent war with *Spain*, ſhall be imported into *Great Britain* or *Ireland*, or the iſles of *Jerſey*, *Guernſey*, *Alderney*, *Sark*, *Man*, *Minorca*, or the town of *Gibraltar*, from any place, mixed or unmixed with the commodities of the growth or product of any other nation, on penalty of forfeiture of ſuch goods, and treble the value, and of the ſhip or veſſel, with all her furniture, &c. 13 *Geo.* II. P. 543, 544.

This act does not extend to hinder ſuch commodities belonging to the kingdom of *Spain*, which ſhall be imported to *Minorca* or *Gibraltar*, on or before the 1ſt of *May*, 1740, from being imported into *Great-Britain*, on or before the 24th of *June*, 1740, in *Britiſh*-built ſhipping, navigated according to law, and proved on oath before the commiſſioners of the cuſtoms, in the port of *London*, or before the collector and comptroller in any other port of *Great-Britain*, who are to give ſuch oath, and enquire into the truth, whether ſuch goods were imported into *Minorca* or *Gibraltar*, before the 1ſt day of *May*.

If any diſpute ariſe, whether the commodities ſeized for having been imported as aforeſaid, or any part thereof, ſingle or mixed, were of the growth or manufacture of *Spain*, or imported contrary to this act; the proof ſhall be made by the importer or claimer, and not by the informer or officer; and in default of ſuch proof, then judgement ſhall be given for recovery of the forfeiture, and execution immediately granted: And if any informer or other perſon, who ſhall ſeize or proſecute any goods or commodities, by virtue of this act ſhall, by fraud or colluſion, delay the ſaid proſecution, or the

the profecution of any perſon offending againſt this act, he ſhall forfeit 500l. for every offence.

It is further enacted, that his majeſty, at any time during the war, may by proclamation, or order in council, to be publiſhed in the *London Gazette*, take off the ſaid prohibition; and thereupon ſuch goods may be imported, being firſt duly entered, and paying the cuſtoms. 13 *Geo.* II. P. 546.

No perſon ſhall be admitted to enter a claim to ſuch ſeizure, without giving 100l. ſecurity, to anſwer all charges of proſecution; and in default, the ſaid ſeizure ſhall be condemned.

No goods ſeized and condemned in the ſaid iſlands of *Jerſey*, &c. or in *Gibraltar*, by virtue of this act, ſhall be imported into *Great-Britain* or *Ireland*, on any pretence whatſoever, on penalty of forfeiting the ſame, and treble the value, and alſo the ſhip importing the ſame, with her tackle, ammunition, &c. to be divided, as if ſuch ſhips and goods had been imported from foreign parts, contrary to this act, &c. P. 547.

Of the *Admiralty*.

AS the kingdom of *Great-Britain* is on all ſides ſurrounded by the ſea, there will ever be a neceſſity for a ſtrong maritime force to protect and defend it; our wooden walls are our bulwarks and redoubts, to which we owe our ſafety, and the protection of that advantageous commerce we carry on.

And for tranſacting of marine affairs, the lord high admiral hath courts of his own, of which that at *London* is principal and chief, where all proceſs and proceedings run in his name, and not in the king's, as they do in all the courts of *common law*. The firſt title of admiral of *England*, expreſsly conferred upon a ſubject, was given by patent of king *Richard* II. to the earl of *Arundel* and *Surry*; and it appears, that anciently he had juriſdiction of all cauſes of merchants and mariners, happening not only upon the main ſea, but in all foreign parts, within the king's dominions, and without them, and was to judge them in a ſummary way, according to the laws of *Oleron* and others. 4 Inſt. 75.

In the reign of *Edward* III. the court of admiralty was eſtabliſhed, and *Rich.* II. limited its juriſdiction. Of late times this high office has been generally executed by commiſſioners, who by ſtatute are impowered to uſe and execute the ſame authorities as were formerly exerciſed by the lord high admiral. 2 *W.* & *M.* C. 2.

But the requiſites are, on every new commiſſion being made out, reſigned, by ſome deed or writing to the crown. The number of commiſſioners is not limited by ſtatute, but, for many years paſt, the commiſſions have conſiſted of a firſt commiſſioner, who preſides at the board, and ſix others who take place in the order in which they are named in the commiſſions. They are ſtiled lords of the admiralty, and the firſt lord, is, in effect, lord high admiral, having the ſupreme direction of the board, except that no orders or commiſſions are valid when ſigned by him alone, it being neceſſary for two more to ſign with him, notwithſtanding which he is not to be commanded by them.

Subject to this authority are all the naval officers and ſhipping, and all the marine boards; as the *navy-office*, *victualling-office*, ſick and wounded offices, *Deptford*, *Woolwich*, *Chatham*, *Sheerneſs*, *Plymouth*, and *Portſmouth dock-yards*. As are alſo all the ſhips and veſſels of war; their admirals, commanders, lieutenants, officers, and men.

The lords commiſſioners of the admiralty have the general direction of the affairs of the navy; they determine the number and ſize of the ſhips to be built, repaired, and put into commiſſion: But it is a vulgar error to ſuppoſe that the firſt lord has the appointment of the deſtination of fleets in time of war; he has only his vote as a ſingle miniſter in the cabinet council, though, being at the head of the marine department, his advice may influence the determinations of the king, and the reſt of his miniſters.

The admiralty grant their commiſſions to ſuch perſon as his majeſty directs, whereby he is appointed admiral and commander in chief of the fleet, for the expedition which is deſigned. And ſuch admiral, when out of the *Britiſh* channel, appoints all officers, as vacancies happen, who muſt be, and generally are, confirmed by the admiralty, if no very material objection occurs.

Juriſdiction of the *Admiralty.*

THE juriſdiction of the lord high admiral, or of the lords commiſſioners for executing the office, is over *Great-Britain*, *Ireland*, and *Wales*, with the dominions and iſlands belonging to them: As alſo over all his majeſty's colonies, plantations, factories, and other ſettlements, dominions, and territories whatſoever in parts beyond the ſeas.

The admiralty hath cognizance of the death or maiming a man, committed in any ſhip riding in great rivers, beneath the bridges thereof near the ſea. 15 *Rich.* II. C. 3. S. 2.

But if a man be killed on any arm of the ſea, where the land is ſeen on both ſides, the coroner is by *common law* to inquire of it, and not the admiral; for the county may take cognizance of it, and where a county may enquire the lord admiral has no juriſdiction. 3 *Rep.* 107.

All ports and havens, as has been before obſerved, are *infrà corpus comitatus*, where the admiral has no juriſdiction; and, between high and low-water-mark, he and the *common law* have it by turns, one upon the water, and the other upon the land. 3 Inſt. 113.

The admiral hath power to arreſt ſhips for the ſervice of the king or commonwealth; and every commander, officer, or ſoldier of ſhips of war, ſhall obſerve the admiral's commands, &c. on pain of death, or other puniſhment. 13 *Car.* II. C. 9.

The lord admiral hath power to grant commiſſions to inferior admirals, &c. to call courts martial for the trial of offences againſt the articles of war, and theſe courts determine by plurality of voices, &c. Ditto.

An admiralty proceſs is made out in the admiral's name, who has under him a judge, commonly ſome learned civilian; and though the proceedings are according to civil law, and the *Maritime laws* of *Rhodes* and *Oleron*, the ſea being without the *common laws*, yet, by ſtat. 28 *Hen.* VIII. murder, robbery, &c. at ſea, may be tried by ſpecial commiſſion to the lord admiral, &c. according to the laws of *England*. See 11 and 12 *W.* III. C. 7.

The admiralty is ſaid to be no court of record, on account of its proceeding by the *civil law*. 4 Inſt. 133.

But the admiralty has juriſdiction where the *common law* can give no remedy; and all maritime cauſes, or cauſes ariſing wholly upon the ſea, it hath cognizance of. 6 *Rep.*

The admiralty hath juriſdiction in caſes of *freight*, *mariners wages*, breach of *charter-parties*, though made within the realm; if the penalty be not demanded; and likewiſe in caſe of building, mending, ſaving, and victualling ſhips, &c. ſo as the ſuit be againſt the ſhip, and not only againſt the parties. 2 *Cro.* 216.

Mariners wages are contracted on the credit of the ſhip, and they may all join ſuits in the admiralty, whereas in common law they muſt all ſever; and, on the contrary, the maſter of a ſhip contracts on the owners credit, and not the ſhip's, and therefore he cannot proſecute in the admiralty for his wages. 1 *Salk.* 32.

It is allowed by the common lawyers and civilians, that the lord admiral has cognizance of ſeamen's wages and contracts, and debts, for making ſhips; alſo of things done in navigable rivers, concerning damages to perſons, ſhips, goods, annoyances of free paſſage, &c. of contracts, and other things done beyond ſea, relating to navigation and marine trade. *Wood's* Inſt. 818.

But if a contract be made beyond ſea for doing of an act, or payment of money within this kingdom, or the contract is upon the ſea, and not for a marine cauſe, it ſhall be tried by jury; for where part belongs to the common law, and part to the admiral, the common law ſhall be preferred; and contracts made beyond ſea may be tried in *B. R.* and a fact be laid to be done in any place in *England*, and ſo tried here. 2 *Bulſt.* 322.

Where a contract is made in *England*, and there is a converſion beyond ſea, the party may ſue in the *admiralty*, or at common law. 4 *Leon.* 257.

So where a bond is made and delivered in *France*: An obligation made at ſea, it has been held, cannot be ſued in the admiral's court, becauſe it takes its courſe, and binds according to the common law. *Heb.* 11.

The court of *admiralty* cannot hold plea of a matter ariſing from a contract made upon the land, though the contract was concerning things belonging to the ſhip; but the *admiralty* may hold plea for the ſeamen's wages, &c. becauſe they become due for labour done on the ſea; and the contract made upon land is only to aſcertain them. 3 *Lev.* 60.

Though where there is a ſpecial agreement in writing, by which ſeamen are to receive their wages in any other manner than uſual; or if the agreement at land be under ſeal, ſo as to be more than a *parole* contract, it is otherwiſe. 1 *Salk.* 31. See *Hob.* 79.

If goods delivered on ſhipboard are embezzled, all the mariners ought to contribute to the ſatisfaction of the party who is the ſufferer, by the marine law, and the cauſe is to be tried in the admiralty. 1 *Lill.* 368.

By the cuſtom of the *admiralty*, goods may be attached in the hands of a third perſon, *in cauſa maritima & civili*, and they ſhall be delivered to the plaintiff after defaults, on caution to reſtore them, if the debt, &c. be diſproved in a year and a day; and if the party refuſe to deliver them, he may be impriſoned *quouſque*, &c. *March's* Rep. 204.

The court of *admiralty* may cauſe a party to enter into a bond, in nature of caution or ſtipulation, like bail at *common law*; and if he render his body, the ſureties are diſcharged; and execution ſhall be of the goods, or the body, &c. not of the lands. *Godb.* 260. 1 *Shep.* Ab. 129. See 1 *Salk.* 33.

Some ſailors clothes were bought in the pariſh of *St. Catharine*, near the *Tower*, *London*, and were delivered in the ſhip: On a ſuit in the *admiralty* for the money, prohibition was granted; for this was within the county. The ſame of a ſhip at *Blackwall*, &c. *Owen* 122. *Hughes* Ab. 113.

But the *admiralty* may proceed againſt a ſhip, and the ſails, and tackle, when they are on ſhore, although alledged to be detained on land; yet upon alledging offer of a plea, claiming property therein, and refuſal of the plea, on this ſuggeſtion a prohibition ſhall be had. 1 *Show.* 179.

The *admiralty* court may award execution upon land, though not hold plea on any thing ariſing on land. 4 Inſt. 141.

And,

And, upon letters miſſive or requeſt, the *admiralty* here may award execution, on a judgment given beyond ſea, where an *Engliſhman* flies, or comes over hither, by impriſonment of the party who ſhall not be delivered by the *common law*. 1 *Roll's* Abrid. 530.

When ſentence is given in a foreign *admiralty*, the party may libel for execution of that ſentence here; becauſe all courts of *admiralty* in *Europe* are governed by the *civil law*. *Sid.* 418.

Sentences of any admiralty in another kingdom are to be credited, that our's may be credited there, and ſhall not be examined at law here; but the king may be petitioned, who may cauſe the complaint to be examined; and, if he finds juſt cauſe, may ſend to his ambaſſador where the ſentence was given, to demand redreſs; and upon failure thereof, will grant letters of marque and repriſal. *Raym.* 437.

If one be ſued in the *admiralty*, contrary to the ſtatutes 13 and 15 *R.* II. he may have a *Superſedeas*, to cauſe the judge to ſtay the proceedings, and alſo have action againſt the party ſuing. 10 Rep. 75.

A ſhip being privately arreſted by *admiralty* proceſs only, and no ſuit, it was adjudged a proſecution within the meaning of the ſtatutes, and double damages, &c. ſhall be recovered. 1 *Salk.* 31, 32.

And if an erroneous judgement is given in the *admiralty*, appeal may be had to delegates appointed by commiſſion out of *Chancery*, whoſe ſentence ſhall be final.

The *Lord High Admiral* of *Great-Britain* doth, by virtue of his place, appoint, in divers parts of the kingdom, his ſeveral ſubſtitutes, or *vice-admirals*, with their judges and marſhals, by patent under the geat ſeal of the high court of *admiralty*, which *vice-admirals* and judges do exerciſe juriſdiction in maritime affairs, within their ſeveral limits; and in caſe any perſon be aggrieved by any ſentence or interlocutory decree that has the force of a definitive ſentence, he may appeal to the *high court of admiralty*. Stat. 8 *Eliz.* C. 5.

Beſides the above-mentioned vice-admirals, &c. the lord high admiral hath under him many officers differing in degrees and qualities, as ſome are a military and others of a civil capacity, ſome judicial and others miniſterial; ſo that the marine juriſdiction may juſtly be deemed a ſeparate common-wealth or kingdom, and the lord high admiral be reputed as a viceroy of it.

There is, under this court, a court of *equity*, for determining differences between merchants; and in criminal affairs, which is commonly about piracy: The proceeding in this court was formerly by accuſation and information, according to the *civil law*, by a man's own confeſſion, or eye-witneſſes, by which any one was to be proved guilty before he could be condemned; but that being found inconvenient, there were two ſtatutes made by *Hen.* VIII. that criminal affairs ſhould be tried by witneſſes and a jury, and this by a ſpecial commiſſion of the king to the lord admiral, wherein ſome of the judges of the realm are ever commiſſioners, and the trial, according to the laws of *England*, directed by thoſe ſtatutes.

There ſeems to be *Diviſum Imperium* between the *common law* of *England* and the *admiralty*; for ſo far as low-water-mark is obſerved in the ſea, is counted *infrà corpus comitatus adjacentis*, and the cauſes thence ariſing are determinable by the common law; yet when the ſea is full, the admiral hath juriſdiction here alſo, ſo long as the ſea flows, over matters done between the low-water mark and the land, as appears in Sir *Henry Conſtable*'s caſe.

The management of the navy royal, under the lord high admiral, is committed to the care of the principal officers and commiſſioners of it; and as all the laws, for regulating and ordering his majeſty's navies and forces by ſea, were in the 22 *Geo.* II. collected and formed into one body, I have determined to give my reader an abſtract of it, in hopes the inſpecting ſo excellent a *code* may afford him pleaſure. 5 *Rep. Coke*, P. 137.

The preamble ſets forth, that the ſeveral ſea-laws having been found not to be ſo full, clear, expedient, or conſiſtent with each other, as they ought to be, therefore, to amend and explain the ſame, and to reduce them into one uniform act, *It is enacted*, that from and after the 25th of *December*, 1749, the articles and orders following, as well in time of peace as in war, ſhall be obſerved and put in execution in manner herein after mentioned. 22 *Geo.* II. P. 609.

1. All commanders, captains, &c. of his majeſty's ſhips of war, ſhall cauſe the publick worſhip of Almighty God, according to the liturgy of the church of *England*, to

to be reverently performed in their reſpective ſhips; and ſhall take care that prayers and preaching be performed diligently, and that the Lord's day be obſerved according to law.

2. All flag-officers, and perſons belonging to his majeſty's ſhips of war, being guilty of profane oaths, curſings, execrations, drunkenneſs, uncleanneſs, or other ſcandalous actions, in derogation of God's honour, and corruption of good manners, ſhall incur ſuch puniſhment as a court martial ſhall think fit to impoſe, &c.

3. If any officer or other perſon of the fleet ſhall give or entertain intelligence to or with any enemy, or rebel, without leave from the king or the lord high admiral, &c. and be thereof convicted by a court martial, he ſhall be puniſhed with death.

4. If any letter or meſſage from any enemy or rebel be conveyed to any officer, or any other perſon in the fleet, and ſuch perſon ſhall not, within twelve hours, having opportunity, acquaint his ſuperior officer with it; or if any ſuperior officer, being acquainted therewith, ſhall not in convenient time reveal the ſame to the commander in chief, every perſon ſo offending ſhall ſuffer death, &c. P. 699.

5. All ſpies, who ſhall bring or deliver any ſeducing letters or meſſages from any enemy or rebel, or endeavour to corrupt any perſon in the fleet, they ſhall ſuffer death.

6. No perſon in the fleet ſhall relieve an enemy or rebel with money, victuals, powder, ſhot, arms, ammunition, or any other ſupplies, directly or indirectly, upon pain of death, &c.

7. All writings whatſoever, that ſhall be taken or found on board ſhips which ſhall be taken as prize, ſhall be preſerved, and the originals ſhall, by the commanding officer of the ſhip which ſhall take ſuch prize, be ſent entirely and without fraud to the court of admiralty, or ſuch other court or commiſſioners as ſhall be authorized to determine whether ſuch prize be lawful capture, there to be viewed, made uſe of, and proceeded upon, according to law, upon pain of forfeiting his ſhare of the capture, &c.

8. No perſon in or belonging to the fleet ſhall take out of any prize any money, plate, or goods, unleſs it ſhall be neceſſary for the better ſecuring thereof, or for the neceſſary uſe or ſervice of any of his majeſty's ſhips of war, before the ſame be adjudged lawful prize; but the entire account of the whole, without embezzlement, ſhall be brought in, and judgment paſſed upon the whole, without fraud, upon pain that every perſon offending ſhall forfeit his ſhare of the capture, &c.

9. If any veſſel ſhall be taken as prize, none of the officers or perſons on board her ſhall be ſtripped of their cloaths, or pillaged, beaten, or evil-intreated, upon pain that the offender ſhall be puniſhed as a court martial ſhall ſentence.

10. Every flag-officer, captain, and commander in the fleet, who, upon ſignal or order of fight or ſight of any ſhip or ſhips, which it may be his duty to engage, or who upon likelihood of engagement ſhall not make the neceſſary preparation for fight, and ſhall not in his own perſon, and according to his place, encourage the inferior officers and men to fight courageouſly, ſhall ſuffer death, or other puniſhment, &c. and if any perſon in the fleet ſhall treacherouſly or cowardly yield, or cry for quarter, on being convicted, ſhall ſuffer death.

11. Every perſon in the fleet who ſhall not duly obſerve the orders of the admiral, flag-officer, commander of any ſquadron or diviſion, or other his ſuperior officer, for aſſailing, joining battle with, or making defence againſt any fleet, ſquadron, or ſhip, or ſhall not obey the orders of his ſuperior officer, in time of action, to the beſt of his power, or ſhall not uſe all poſſible endeavours to put the ſame effectually in execution, being convicted thereof, ſhall ſuffer death, &c.

12. Every perſon in the fleet, who through cowardice, negligence, or diſaffection, ſhall, in time of action, withdraw or keep back, or not come into the engagement, or ſhall not do his utmoſt to take or deſtroy every ſhip which it ſhall be his duty to engage, and to aſſiſt and relieve all and every of his majeſty's ſhips, or thoſe of his allies, which it ſhall be his duty to aſſiſt and relieve, being convicted thereof, ſhall ſuffer death.

13. Every perſon in the fleet, who, through cowardice, negligence, or diſaffection, ſhall forbear to purſue the chace of an enemy, pirate, or rebel, beaten or flying; or ſhall not relieve and aſſiſt a known friend in view, to the utmoſt of his power, being convicted, ſhall ſuffer death.

14. If any action, or any ſervice ſhall be commanded, and any perſon in the fleet ſhall preſume to delay or diſcourage the ſame, upon pretence of arrears of wages, or any pretence whatſoever, and be convicted thereof, he ſhall ſuffer death, &c.

15. Every perſon in, or belonging to the fleet, who ſhall deſert to the enemy, pirate, or rebel, or run away with any of his majeſty's ſhips, or any ordnance, ammunition, ſtores, or proviſion belonging thereto, to the weakening of the ſervice, or yield up the ſame cowardly or treacherouſly, being convicted, ſhall ſuffer death.

16. Every perſon in or belonging to the fleet, who ſhall deſert or intice others ſo to do, ſhall ſuffer death, or ſuch other puniſhment, as the circumſtances of the offence ſhall deſerve, and a court martial ſhall think fit; and if any commanding officer of any of his majeſty's ſhips of war ſhall receive or entertain a deſerter from any other of his majeſty's ſhips, after diſcovering him to be ſuch, and ſhall not, with all convenient ſpeed, give notice to the captain of the ſhip, to which ſuch deſerter belongs, or if the ſaid ſhips are at any conſiderable diſtance from each other, to the ſecretary of the admiralty, or to the commander in chief, every perſon ſo offending, and being convicted, &c. ſhall be caſhiered.

17. The officers and ſeamen of all ſhips appointed for convoy of merchant ſhips, or of any other, ſhall diligently attend upon that charge without delay, according to their inſtructions; and whoſoever ſhall be faulty therein, and ſhall not perform their duty, and defend the ſhips and goods in their convoy, without either diverting to other parts, or occaſions, or refuſing, or neglecting to fight in their defence, if they be aſſailed, or running away cowardly, and ſubmitting the convoy to peril and hazard, or ſhall demand or exact any money or other reward from any merchant or maſter, for convoying of any veſſels intruſted to their care, or ſhall miſuſe the maſters or mariners thereof, ſhall be condemned to make reparation of the damage to the merchants, owners, or others, as the court of admiralty ſhall adjudge, and alſo be puniſhed according to the quality of their offences, by death or other puniſhment, according as ſhall be adjudged by the court martial.

18. If any captain or other officer of any of his majeſty's ſhips ſhall receive on board, or permit to be received on board ſuch ſhip, any goods or merchandize, other than for the ſole uſe of the ſhip, except gold, ſilver, or jewels, and except the goods and merchandizes belonging to any veſſel which may be ſhipwrecked, or in imminent danger of being ſhipwrecked, either on the high ſeas, or in any port, creek, or harbour, in order to the preſerving them for their proper owners, and except ſuch goods or merchandizes as he ſhall be ordered to receive on board by order of the lord high admiral of *Great-Britain*, or the commiſſioners for executing the ſaid office, and be convicted thereof, &c. he ſhall be caſhiered, and be for ever afterwards rendered incapable to ſerve in any place or office in the naval ſervice of his majeſty, &c. 22 *Geo.* II. P. 694.

19. If any perſon in, or belonging to the fleet, ſhall make or endeavour to make any mutinous aſſembly, upon any pretence whatſoever, and be convicted thereof, &c. he ſhall ſuffer death: And if any perſon ſhall utter any words of ſedition or mutiny he ſhall ſuffer death, or ſuch other puniſhment as a court martial ſhall deem him to deſerve: And if any officer, mariner, or ſoldier, ſhall behave himſelf with contempt to his ſuperior officer, ſuch ſuperior officer being in the execution of his office, he ſhall be puniſhed according to the nature of his offence by the judgment of a court martial.

20. If any perſon in the fleet ſhall conceal any traiterous, or mutinous practice, or deſign, being convicted thereof, &c. he ſhall ſuffer death; and if any perſon ſhall conceal any traiterous or mutinous words ſpoken by any, to the prejudice of his majeſty or government, or any words, practices, or deſigns, tending to the hindrance of the ſervice, and ſhall not forthwith reveal the ſame to the commanding officer, or being preſent at any mutiny or ſedition, ſhall not uſe his utmoſt endeavours to ſuppreſs the ſame, he ſhall be puniſhed as a court martial thinks he deſerves.

21. If any perſon in the fleet ſhall find a cauſe of complaint of the unwholeſomeneſs of the victual, or other juſt ground, he ſhall quietly make the ſame known to his ſuperior, or captain, or commander in chief, as the occaſion may deſerve, that ſuch preſent remedy may be had as the matter may require; and the ſaid ſuperior, &c. ſhall, as far as he is able, cauſe the ſame to be preſently remedied: and no perſon upon ſuch, or

any

any other pretence, ſhall attempt to ſtir up any diſturbance, upon pain of ſuch puniſhment as a court martial ſhall think fit to inflict, &c. 22 *Geo.* II. P. 695.

22. If any officer or other perſon in the fleet ſhall ſtrike any of his ſuperior officers, or draw, or offer to draw, or lift up any weapon againſt him, being in the execution of his office, on any pretence whatſoever, and be convicted thereof, &c. he ſhall ſuffer death; and if any perſon ſhall preſume to quarrel with any of his ſuperior officers, being in the execution of his office, or ſhall diſobey any lawful command of any of his ſuperior officers, and be convicted thereof, &c. he ſhall ſuffer death, &c.

23. If any perſon in the fleet ſhall quarrel, or fight with any other perſon in the fleet, or uſe reproachful or provoking ſpeeches, or geſtures, tending to make any quarrel or diſturbance, he ſhall, upon being convicted, ſuffer ſuch puniſhment as the offence ſhall deſerve, and a court martial ſhall impoſe.

24. There ſhall be no waſteful expence of any powder, ſhot, ammunition, or other ſtores in the fleet, nor any embezzlement thereof, but the ſtores and proviſions ſhall be carefully preſerved, upon pain of ſuch puniſhment to the offenders, abettors, buyers, and receivers, being perſons ſubject to naval diſcipline, as ſhall be by a court martial found juſt.

25. Every perſon in the fleet, who ſhall unlawfully burn, or ſet fire to any magazine or ſtore of powder, or ſhip, boat, ketch, hoy, or veſſel, or tackle, or furniture thereunto belonging, not then appertaining to an enemy, pirate, or rebel, being convicted of any ſuch offence, by the ſentence of a court martial, ſhall ſuffer death.

26. Care ſhall be taken in the conducting and ſteering any of his majeſty's ſhips, that through wilfulneſs, negligence, or other defaults, no ſhip be ſtranded, or run upon any rocks or ſands, or ſplit, or hazarded, upon pain that ſuch as ſhall be found guilty therein, be puniſhed by death, &c. P. 696.

27. No perſon in, or belonging to the fleet, ſhall ſleep upon his watch, negligently perform the duty impoſed upon him, or forſake his ſtation upon pain of death, &c.

28. All murders committed by any perſon in the fleet, ſhall be puniſhed with death, &c.

29. If any perſon in the fleet ſhall commit the unnatural and deteſtable ſin of buggery or ſodomy, with man or beaſt, he ſhall be puniſhed with death, &c.

30. All robbery committed by any perſon in the fleet, ſhall be puniſhed with death, &c.

31. Every officer, or other perſon in the fleet, who ſhall knowingly make, or ſign a falſe muſter, or muſter book, or who ſhall command, counſel, or procure the making or ſigning thereof, ſhall, upon proof of any ſuch offence, &c. be caſhiered, and rendered incapable of further employment in his majeſty's naval ſervice.

32. No provoſt-martial belonging to the fleet ſhall refuſe to apprehend any criminal, whom he ſhall be authoriſed, by legal warrant, to apprehend, or to receive, or keep any priſoner committed to his charge, or wilfully ſuffer him to eſcape, being once in his cuſtody, or diſmiſs him without lawful order, upon pain of ſuch puniſhment as a court martial ſhall deem him to deſerve: and all officers, and others in the fleet, ſhall do their endeavour to detect, apprehend, and bring to puniſhment all offenders, and ſhall aſſiſt the officers appointed for that purpoſe therein, upon pain of being proceeded againſt, and puniſhed by a court martial, &c. P. 697.

33. If any flag officer, captain, or commander, or lieutenant belonging to the fleet, ſhall be convicted before a court martial, of behaving in a ſcandalous, infamous, cruel, oppreſſive, or fraudulent manner, unbecoming the character of an officer, he ſhall be diſmiſſed from his majeſty's ſervice.

34. Every perſon being in actual ſervice, and full pay, and part of the crew belonging to any of his majeſty's ſhips of war, who ſhall be guilty of mutiny, deſertion, or diſobedience to any lawful command, in any part of his majeſty's dominions on ſhore, when in actual ſervice relative to the fleet, ſhall be liable to be tried by a court martial, and ſuffer the like puniſhment for every ſuch offence as if the ſame had been committed at ſea.

35. If

35. If any perſon who ſhall be in actual ſervice, and full pay in his majeſty's ſhips of war, ſhall commit upon the ſhore, in any place out of his majeſty's dominions, any of the crimes puniſhable by theſe articles and orders, he ſhall be liable to be tried and puniſhed for the ſame, in like manner, as if the ſaid crimes had been committed at ſea.

36. All other crimes, not capital, committed by any perſon in the fleet, which are not mentioned in this act, or for which no puniſhment is hereby directed to be inflicted, ſhall be puniſhed according to the laws and cuſtoms in ſuch caſes uſed at ſea.

No perſon convicted of any offence, ſhall, by the ſentence of any court martial, be adjudged to be impriſoned for a longer term than two years. 22 *Geo.* II. P. 698.

No court martial ſhall proceed to the puniſhment, or trial of any offence, except the offences ſpecified in the 5th, 34th, and 35th of the foregoing articles and orders, which ſhall not be committed upon the main ſea, or in great rivers only, beneath the bridges of the ſaid rivers nigh to the ſea, or in any haven, river, or creek, within the juriſdiction of the admiralty, and which ſhall not be committed by ſuch perſons, as, at the time of the offence, ſhall be in actual ſervice, and full pay in the fleet; ſuch perſons only excepted, and for ſuch offences only, as are deſcribed in the 5th and the foregoing articles and orders.

No court martial, conſtituted by virtue of this act, ſhall proceed to the puniſhment or trial of any land officer or ſoldier, on board any tranſport ſhip, for any offences ſpecified in the ſaid articles.

From and after the 25th of *December*, 1749, the lord high admiral of *Great-Britain*, or the commiſſioners for executing the ſaid office, are impowered to grant commiſſions to the commanders in chief of any fleet or ſquadron of ſhips of war, to call and aſſemble courts martial, conſiſting of commanders and captains, and if ſuch commander in chief ſhall die, be recalled or removed from his command, then the officer upon whom the ſaid command ſhall from time to time devolve, ſhall have the ſame power to call and aſſemble courts martial, as the firſt commander in chief ſhall be inveſted with.

No commander in chief of any fleet or ſquadron of his majeſty's ſhips, or detachment thereof, conſiſting of more than five ſhips, ſhall preſide at any court martial in foreign part; but the next officer in command ſhall hold ſuch court martial and preſide thereat. P. 699.

From and after the 25th day of *December*, 1749, if any commander in chief in foreign parts ſhall detach any part of his fleet or ſquadron, he ſhall by writing, under his hand, impower the chief commander of the ſquadron or detachment ordered on ſuch ſeparate ſervice, and in caſe of his death or removal, the officer to whom the command ſhall belong, to hold courts martial during the time of ſuch ſeparate ſervice, or until he ſhall return to his commander in chief, or ſhall come under the command of any other his ſuperior officer, or return to *Great-Britain* or *Ireland*.

Where any material objection occurs, which may render it improper for the perſon, next in command to the ſenior officer, or commander in chief of any fleet or ſquadron, in foreign parts, to hold courts martial or preſide thereat, the lord high admiral, or the commiſſioners for executing the ſaid office, as alſo the commander in chief of ſuch fleet or ſquadron, may appoint the third officer in command to preſide at or hold ſuch court martial. P. 700.

From and after the 25th of *December*, 1749, the lord high admiral, or the commiſſioners for executing the ſaid office, are impowered to direct any flag officer or captain of any of his majeſty's ſhips of war who ſhall be in any port of *Great-Britain* or *Ireland*, to hold courts martial in ſuch port, provided ſuch officer be the firſt, ſecond, or third in command in ſuch port, as ſhall be found moſt expedient, and for the good of the ſervice; and ſuch flag officer or captain ſhall preſide thereat.

From and after the 25th of *December*, 1749, no court martial ſhall conſiſt of more than thirteen, or of leſs than five perſons, to be compoſed of ſuch flag officers, captains, or commanders, then and there preſent, as are next in ſeniority to the officer who preſides at the court martial.

The lord high admiral, or the commiſſioners for executing the ſaid office, or any officer impowered to order or hold courts martial, ſhall not direct or aſcertain the particular number of perſons of which any court martial ſhall conſiſt.

If

If any court martial ſhall be appointed to be held at any place where there are not leſs than three, nor yet ſo many as five officers of the degree of a poſt captain, or of a ſuperior rank to be found, the officer who is to preſide ſhall call to his aſſiſtance as many of the commanders of his majeſty's veſſels under that rank as, together with the poſt captains, will make up the number of five, to hold ſuch court martial. 22 *Geo.* II. p. 701.

From and after the 25th of *December*, 1749, no member of a court martial, after trial is begun, ſhall go on ſhore till ſentence be given, but remain on board the ſhip in which the court ſhall firſt aſſemble, except in caſe of ſickneſs, to be judged of by the court, upon pain of being caſhiered; nor ſhall the proceedings of the court be delayed by the abſence of any members, provided a ſufficient number remain to compoſe the court, which ſhall ſit from day to day, *Sunday* always excepted, until ſentence be given.

From and after the ſaid 25th of *December* all the officers preſent, who are to conſtitute a court martial for the trial of offenders, ſhall, before they proceed to trial, take an oath before the court, to be adminiſtered by the judge advocate or his deputy, in the words following, *viz.* P. 702.

"I *A. B.* do ſwear, that I will duly adminiſter juſtice, according to the articles and orders eſtabliſhed by an act paſſed in the twenty-ſecond year of the reign of his majeſty king *George* the ſecond, for amending, explaining, and reducing into one act of parliament, the laws relating to the government of his majeſty's ſhips, veſſels, and forces by ſea, without partiality, favour, or affection; and if any caſe ſhall ariſe, which is not particularly mentioned in the ſaid articles and orders, I will duly adminiſter juſtice according to my conſcience, the beſt of my underſtanding, and the cuſtom of the navy in the like caſes; and I do further ſwear, that I will not upon any account, at any time whatſoever, diſcloſe or diſcover the vote or opinion of any particular member of this court martial, unleſs thereunto required by act of parliament. *So help me God.*"

And ſo ſoon as the ſaid oath ſhall have been adminiſtered to the reſpective members, the preſident of the court ſhall adminiſter to the judge advocate, or the perſon officiating as ſuch, an oath in the following words:

"I *A. B.* do ſwear, that I will not, upon any account, at any time whatſoever, diſcloſe or diſcover the vote or opinion of any particular member of this court martial, unleſs thereunto required by act of parliament. *So help me God.*"

If any perſon in the fleet, being called upon to give evidence at any court martial, ſhall refuſe to give evidence upon oath, or ſhall prevaricate, or behave with contempt to the court, ſuch court martial is impowered to commit the offender, for any time not exceeding three months, in caſe of ſuch refuſal or prevarication, nor longer than one month in caſe of ſuch contempt; and every perſon who ſhall either commit, or corruptly procure or ſuborn any perſon to commit wilful perjury, ſhall be proſecuted in the *King*'s *Bench* by indictment or information; and every iſſue joined thereon ſhall be tried by a jury of *Middleſex*, or ſuch other county as the ſaid court ſhall direct; and the offender, upon conviction, ſhall ſuffer the pains and penalties enacted to be inflicted for the like offences by an act of 5 *Eliz.* and 2 *Geo.* II. &c.

In every ſuch information or indictment, it ſhall be ſufficient to ſet forth the offences charged upon the defendant, without ſetting forth the commiſſion for holding the court martial, or the particular matter tried, or directed to be tried, before ſuch court. P. 703.

From and after the 25th of *December*, 1749, no ſentence of death given by any court martial held within the *Narrow Seas*, except in caſes of mutiny, ſhall be executed till after report of the proceedings ſhall have been made to the lord high admiral, or the commiſſioners for executing the ſaid office, and his or their direction ſhall have been given therein; and if the ſaid court ſhall have been held beyond the *Narrow Seas*, then

ſuch ſentence of death ſhall not be executed but by order of the commander of the fleet or ſquadron wherein ſentence was paſſed; and where ſentence of death ſhall be paſſed in any ſquadron detached from any other fleet or ſquadron upon a ſeparate ſervice, then ſuch ſentence, except in caſes of mutiny, ſhall not be executed but by order of the commander of the fleet or ſquadron from which ſuch detachment ſhall have been made, or of the lord high admiral, or the commiſſioners for executing the ſaid office; and where ſentence of death ſhall be paſſed in any court held by the ſenior officer of five or more ſhips which ſhall happen to meet in foreign parts, then ſuch ſentence, except in caſes of mutiny, ſhall not be executed but by order of the lord high admiral, or commiſſioners for executing the ſaid office.

The judge advocate, or his deputy, is to adminiſter an oath to witneſſes at any trial by a court martial; and in the abſence of the judge advocate, or his deputy, the court ſhall appoint any perſon to execute the ſaid office. 22 *Geo.* II. P. 704.

From and after the 25th of *December*, 1749, all the powers given by the ſeveral articles and orders eſtabliſhed by this act ſhall be in force, with reſpect to the crews of ſuch of his majeſty's ſhips as ſhall be wrecked, or be otherwiſe loſt or deſtroyed; and all the command and authority given to the officers ſhall be in force as effectually as if ſuch ſhips, to which they did belong, were not ſo wrecked or deſtroyed, until they ſhall be diſcharged from his majeſty's further ſervice, or removed into ſome other ſhip of war, or until a court martial be held to enquire into the cauſes of the loſs of the ſaid ſhip; and if it ſhall appear, by the ſentence of the court, that the ſaid officers or ſeamen did their utmoſt to preſerve or recover the ſaid ſhip, and ſince the loſs thereof have behaved obediently to their ſuperior officers, according to the diſcipline of the navy and the articles aforeſaid, then all the pay and wages of the ſaid officers and ſeamen, or of ſuch of them as ſhall have done their duty, ſhall be paid to the time of their diſcharge or death; or, if they ſhall be then alive, to the time of the holding of ſuch court martial, or their removal into ſome other of his majeſty's ſhips; and every perſon who, after the wreck or loſs of his ſhip, ſhall act contrary to the diſcipline of the navy, and the articles and orders aforeſaid, ſhall be ſentenced by the ſaid court martial, and puniſhed, as if the ſhip to which he did belong was not ſo wrecked or deſtroyed.

From and after the 25th of *December*, all the pay and wages of ſuch officers and ſeamen of any of his majeſty's ſhips as are taken by the enemy, and, upon enquiry at a court martial, ſhall appear by the ſentence of the ſaid court to have done their utmoſt to defend the ſaid ſhip, and ſince the taking thereof to have behaved obediently to their ſuperior officers, according to the diſcipline of the navy and the articles aforeſaid, ſhall be paid from the time of their being ſo taken to the time of the holding of ſuch court martial, or until they ſhall be diſcharged from his majeſty's ſervice, or removed into ſome other ſhip of war, or, if they ſhall die in captivity, or before the holding of ſuch court martial, to the time of their death, in ſuch manner as if the ſhip to which they did belong reſpectively was not ſo taken. P. 705.

No perſon, not flying from juſtice, ſhall be tried or puniſhed by any court martial for any offence againſt this act, unleſs complaint of ſuch offence be made in writing to the lord high admiral, or to the commiſſioners for executing the ſaid office, or any commander in chief of his majeſty's ſquadrons or ſhips impowered to hold courts martial; or unleſs a court martial to try ſuch offender ſhall be ordered by the lord high admiral, or the commiſſioners for executing the ſaid office, or the ſaid commander in chief, either within three years after ſuch offence ſhall be committed, or within one year after the return of the ſhip or ſquadron, to which ſuch offender ſhall belong, into any of the ports of *Great-Britain* or *Ireland*, or within one year after the return of ſuch offender into *Great-Britain* or *Ireland*.

From and after the ſaid 25th of *December*, if any captain or other officer of the fleet ſhall receive, or ſuffer to be received on board, any goods or merchandizes, contrary to the true intent and meaning of the eighteenth article of this act, he ſhall for every ſuch offence, over and above any puniſhment inflicted by this act, forfeit and pay the value of ſuch goods and merchandizes, or the ſum of 500*l.* at the election of the informers, or perſon who ſhall ſue for the ſame, ſo that no more than one of theſe forfeitures ſhall be ſued for and recovered againſt the ſame perſon for one and the ſame offence; one moiety to the informer, and the other to *Greenwich* hoſpital, &c. P. 706.

This

This act ſhall not extend to take away from the lord high admiral, or the commiſſioners for executing the ſaid office, or any vice-admiral, or judge of the admiralty, or his or their deputies, or any officers or miniſters of the admiralty, or others having or claiming any admiral power or authority within this realm, or any other the king's dominions, or from any perſon or court whatſoever, any power, right, juriſdiction, pre-eminence, or authority, which any of them lawfully hath, or had, or ought to have and enjoy before the making of this act, ſo as the ſame perſon ſhall not be puniſhed twice for the ſame offence. 22 *Geo.* II. P. 707.

The repeal of the before-recited ſtatutes, or any thing herein contained, ſhall not diſcharge or prevent any proſecution or ſuit which is or ſhall be commenced againſt any perſon, for any offence committed on or before the ſaid 25th of *December*, 1749, or to be committed againſt the ſaid ſtatutes; but all perſons who have been, or ſhall, before the ſaid 25th of *December*, be guilty of any ſuch offence, ſhall and may be proſecuted, condemned, and puniſhed for the ſame, as well after as before the ſaid 25th of *December*, as if the ſaid ſtatutes had not been repealed.

Since the above act the following was made, for the encouragement of ſeamen to enter into his majeſty's ſervice, during the war begun in 1756.

The preamble ſets forth, that the encouragement of ſeamen, employed in the royal navy, will greatly tend to augment the marine force of this realm, whereon, under the good providence and protection of God, the ſecurity of theſe kingdoms, and the ſupport and preſervation of their commerce, do moſt immediately depend: And that, by an act 1 *Geo.* II. and another of the ſame ſeſſion, ſeveral proviſions and regulations were enacted and preſcribed for the benefit and encouragement of ſeamen employed in the royal navy, and for preventing frauds and abuſes in purchaſing their wages; which proviſions and regulations, from various difficulties in carrying the ſame into execution, have been found in a great meaſure ineffectual to anſwer the purpoſe thereby intended: And that the eſtabliſhing a regular method for the punctual, frequent, and certain payment of the wages or pay due to inferior officers and ſeamen employed in the royal navy; the enabliug ſuch officers and ſeamen more eaſily and readily to obtain ſuch payments, and to allot and remit any part thereof, for the ſupport and relief of their wives and families; and the preventing, as far as may be, the unwary, the ignorant, or the neceſſitous, from being defrauded and injured by the extortion and uſury of wicked and evil deſigning perſons, are of the utmoſt conſequence to the publick ſervice: Therefore, for effectuating theſe important and compaſſionate purpoſes, *It is enacted*, that from and after *November* 1, 1758, every volunteer, who ſhall enter his name with a commiſſion officer, appointed for entering volunteers in the royal navy, and ſhall receive from him a certificate thereof, which is to be given him *gratis*, is entitled to wages from the date thereof, including the day of the date, if he appears on board within fourteen days, if the ſhip is not above one hundred miles from the place of entering; twenty days if above one hundred miles; or thirty days if above two hundred miles; and ſhall be allowed the uſual conduct money, and alſo two months wages advance, at the firſt fitting out the ſhip, and before the ſhip proceeds to ſea. 31 *Geo.* II.

Every ſupernumerary man ſerving ten days in any ſhip, ſhall be borne for and intitled to his wages upon the books of ſuch ſhip, and to all other benefits, as if he was part of the complement: But men lent from one ſhip to another, ſhall continue to be borne for the ſhip from which they were lent, till diſcharged.

Every inferior officer or ſeaman, who ſhall be turned over from one ſhip to another, in caſe the ſhip into which he is turned over, is then, or ſhall, come into a port of *Great-Britain*, where there is a commiſſioner of the navy, ſhall be paid all the wages due to him in the ſhip from which he was turned over, before the ſhip in which he was turned over ſhall proceed to ſea, unleſs directed otherwiſe by ſpecial order from the admiralty, in caſes of the greateſt exigency only; and if the ſhip proceed to ſea, the wages ſhall be paid as ſoon as ſuch ſhip ſhall come again into any port of *Great-Britain*, where there is a commiſſioner.

Every officer or ſeaman, who ſhall be turned over, ſhall not be rated in a lower degree than he ſerved in the former ſhip; and above his wages, ſhall receive two months advance before the ſhip ſhall proceed to ſea.

As

As often as any ſhip, which ſhall have been in ſea pay twelve months or more, ſhall arrive in any port of *Great-Britain*, or on the coaſt thereof, the maſter ſhall cauſe five complete pay-books to be made out for the time ſuch ſhips ſhall have been in pay, except the laſt ſix months, and tranſmit ſuch books, together with three alphabets, and a ſlop-book to the navy-board: And as ſoon as ſuch ſhip ſhall arrive in any port of *Great-Britain*, where there is a commiſſioner, immediate payment ſhall be made of the wages due to the officers and ſeamen, their executors, &c. deducting the advance money and all defalcations, leaving always ſix months wages unpaid and no more. And all wages, due to any ſhips, ſhall be paid as ſoon as may be, or within two months at fartheſt, after the arrival of ſuch ſhip in port to be laid up.

If any inferior officer or ſeaman, who was abſent at the payment of his ſhip, or his captain for him, ſhall apply to the navy board, in caſe ſuch ſhip ſhall be in any port of *Great-Britain*, where there is a commiſſioner, the pay-liſts ſhall be ſent to ſuch commiſſioner, who ſhall forthwith cauſe the wages to be paid to ſuch perſon.

The commander ſhall make out a ticket upon the death of every petty officer or ſeaman, and ſhall tranſmit the ſame to the navy-board, who are to cauſe the day of receipt to be indorſed thereon, and ſhall examine and ſign the ſame for payment within one month after the receipt thereof: And the ſame ſhall be delivered, and payment thereof made, without fee or reward, to the executors, adminiſtrators, or attorney, or the executors, &c. of ſuch officer or ſeamen.

When any inferior officer or ſeaman ſhall be rendered unſerviceable, the commander ſhall give him a certificate of his diſcharge, and make out a ticket for his pay, unleſs the ſhips ſhall be in ſome port of *Great-Britain*, or on the coaſt thereof, or ſhall belong to ſome ſquadron from which he is not ſeparated; in which caſe he is to make a report to the commander in chief, and receive his orders thereupon, and ſhall ſend the ticket to the navy-board; and deliver only to ſuch officer or ſeaman the certificate of his diſcharge, containing an exact copy of the ticket, and a deſcription of his perſon. The commiſſioners of the navy ſhall cauſe the day when ſuch ticket was received, to be indorſed thereon; and, after examination, ſhall aſſign the ſame for payment, within one month at fartheſt after making ſuch indorſement. And if any officer or ſeaman ſhall preſent ſuch certificate at the navy-office, the commiſſioners are forthwith to examine ſuch certificate, and the perſon preſenting the ſame; and being ſatisfied therein, ſhall teſtify the ſame on the certificate; and the ticket ſhall be immediately delivered him, and the money paid at the pay-office to ſuch officer or ſeaman only, without fee or reward. If the tickets ſhall not have been tranſmitted to the navy-office, the money appearing to be due by the copy, ſhall be paid as if the certificate had been received. Such officer or ſeaman, being deſirous to receive his wages at any port of *Great-Britain*, where a commiſſioner reſides, may produce his certificate to him, who being ſatisfied of the truth thereof ſhall ſign and tranſmit the ſame to the navy-board; who, within four days after receiving it, are to ſend the ticket if received, otherwiſe a copy of the certificate, to the commiſſioner at ſuch port, who ſhall cauſe immediate payment thereof to be made, without fee or reward. And ſend ſuch officer or ſeaman to the neareſt hoſpital, where he is to be received and victualled, from the time of preſenting ſuch certificate until payment is made.

If ſuch certificate be loſt or deſtroyed, or not preſented in perſon, or the money paid before the general payment of the ſhip's company, the ticket ſhall be cancelled, and the wages paid as if no ticket had been made out.

When any inferior officer or ſeaman ſhall, by order of the commander, be ſet aſhore, and be ſent to any hoſpital or ſick quarters, ſuch commander ſhall make out a ſick ticket for the wages due to ſuch perſon, and tranſmit the ſame with ſuch officer or ſeaman to ſuch hoſpital or ſick quarters; and if he ſhall be regularly diſcharged from thence as unſerviceable, a certificate of his diſcharge with the ſick ticket annexed, ſhall be delivered to him; and if he ſhall preſent the ſame to a commiſſioner at any port of *Great-Britain*, ſuch commiſſioner, being ſatisfied thereof, ſhall ſign the ſame on the certificate, and tranſmit the certificate and ſick ticket to the navy-board, who are to cauſe the day it was received to be indorſed thereon, and alſo to cauſe it to be examined by the muſter-books, if received; and then within four days, to cauſe a ticket or pay-liſt to be made out for ſuch perſon's wages, and to ſend the ſame to the commiſſioner; who ſhall cauſe

cauſe immediate payment to be made of the wages of ſuch ſeaman, without fee or reward; who, notwithſtanding ſuch diſcharge, ſhall be maintained in ſuch hoſpital or ſick quarters, until the payment be made.

The payment of tickets, certificates, or pay-liſts, ſhall not be delayed, though the muſter or pay-books ſhall not be regularly received at the navy-board; but if any errors ſhall be made in any certificate, ticket, or pay-liſt, the loſs ſhall be made good out of the commander's wages.

As often as any ſhip, which ſhall not be in the port of *Great-Britain*, or on the coaſt thereof, ſhall have twelve months wages due, the commander ſhall cauſe the inferior officers and ſeamens' names to be called over, and ſhall do the ſame whenever twelve months wages ſhall be due; and if any of them ſhall deliver in writing the name and place of abode of his wife, father, or mother, and deſire, that the whole or any part of ſuch wages then due, except the laſt ſix months, ſhould be paid to his ſaid wife, father, or mother, by the receiver-general of the land-tax, collector of the cuſtoms, collector of the exciſe, or clerk of the cheque at any dock-yard, the commander is to ſend a liſt of ſuch perſons to the navy-board, who ſhall make out two bills for the payment of the wages ſo allotted by each perſon, one of them to be ſent to the perſons reſpectively ſpecified in ſuch liſts, and the other to the receiver, &c. And if the perſon to whom any ſuch bill is ſent, ſhall within ſix months of the date thereof, produce the ſame to ſuch receiver, &c. together with a certificate, properly authenticated of their being the wife, father, or mother, of ſuch officer or ſeaman reſpectively, ſuch receiver, &c. upon being ſatisfied of the truth of ſuch certificate, which he is to enquire into upon the oath of the perſon producing the ſame, is immediately, without fee or reward, to pay the ſum mentioned in ſuch bill, taking a receipt. Such bill, together with the duplicate thereof, being produced at the navy-office, ſhall be immediately aſſigned for payment by the commiſſioners of the navy, and repaid by the treaſurer to ſuch receiver, &c. or their orders: But if payment of the bill be not demanded within ſix months, the ſum contained in ſuch bill, is to be repaid to ſuch inferior officer or ſeaman, &c.

In like manner when wages ſhall be paid at the pay-office or any of the out-ports, any inferior officer or ſeaman, deſirous to remit the whole or any part of his wages to his wife, children, parents, or any other perſon, may have a bill for the ſame, as in the laſt clauſe.

If any receiver, &c. ſhall not have in his hands publick money ſufficient to pay any bill tendered, and ſhall refuſe payment thereof, he is to indorſe on the back of the bill the cauſe of his delay, and appoint for payment ſome day within two months. And if any receiver, &c. ſhall unneceſſarily refuſe payment, or he or any perſon employed under him, take any gratuity for ſuch payment, any three commiſſioners of the branch of buſineſs he is under, may fine ſuch perſon in any ſum not exceeding fifty pounds; to be levied as are thoſe for offences againſt the laws of cuſtoms and exciſe, and to be paid to the informer.

The wages, &c. earned by an indentured apprentice, ſhall be paid to his maſter, as hath been uſual, unleſs ſuch apprentice was above eighteen years of age, when his indentures were executed, or ſhall be rated as ſervant to an officer, to whom ſuch apprenticeſhip is not known; in which caſe the officer ſhall be entitled to the pay, according to the practice of the navy.

Commanders of ſhips are to tranſmit to the navy-board, complete pay-books, and liſts, and tickets made out, and alſo once in two months muſter-books, not only for the ſaid two months, but from the time the ſhip ſhall have been in commiſſion, or was laſt paid; on failure, the navy-board are not to grant them the general certificate for their wages, unleſs by particular order from the lords of the admiralty, in caſes of neceſſity, and its being made appear to them, that their directions were complied with as far as the nature of the ſervice would admit, and as ſafe opportunities offered: And if any commander ſhall not exculpate himſelf within twelve months after his arrival in *Great-Britain*, he ſhall forfeit all his wages to the cheſt at *Chatham*; and be liable to ſuch other puniſhment, not extending to life and limb, as a court martial ſhall inflict.

No letters of attorney made by inferior officers or ſeamen, or their executors, &c. ſhall be valid, unleſs declared therein revocable, and unleſs the ſame be ſigned before and atteſted by the commander, and another of the ſigning officers, or by a clerk of the cheque; and if made after ſuch perſon ſhall be diſcharged from the ſervice, then to be

ſigned

ſigned before, and atteſted by, the chief magiſtrate where ſuch ſeamen ſhall reſide; or if made by executors, &c. to be ſigned before, and atteſted by, the miniſter and church-wardens, or in *Scotland*, by the miniſter and two elders, of the pariſh where ſuch executors, &c. reſide.

All letters of attorney, other than ſuch as are made and atteſted as aforeſaid, are null and void.

No more than 1s. ſhall be taken by any eccleſiaſtical court, &c. for the probate of any will or letter of adminiſtration, granted to the widows, children, parents, brothers, or ſiſters, of inferior officers, ſeamen, or mariners dying in the ſervice, and for attending the ſame, unleſs the goods and chattels are of the value of 20l. nor more than 2s. unleſs the value of 40l. nor more than 3s. unleſs the value of 60l. nor more than 1s. for iſſuing commiſſions to ſwear ſuch widows, &c. being executors or adminiſtrators to inferior officers, &c. unleſs the goods and chattels are of the value of 20l. nor more than 2s unleſs of the value of 40l. nor more than 3s. unleſs of the value of 60l. under penalty of 50l. to be paid by the offender to the party aggrieved, to be recovered with full coſts of ſuit in any court of record.

Whoſoever ſhall perſonate or aſſume the name or character, or procure any other, to perſonate or falſely to aſſume the name or character of any officer, ſeaman, or other perſon, intitled to wages, &c. for ſervice done in the royal navy, or of the executor, adminiſtrator, wife, relation, or creditor of any officer, &c. in order to receive any wages, &c. or ſhall forge or counterfeit, or procure to be forged or counterfeited, any letter of attorney, or other power in order to receive any wages, &c. or ſhall willingly or knowingly take a falſe oath, or procure a falſe oath to be taken, to obtain the probate of a will or letters of adminiſtration, in order to receive any wages, &c. due, or ſuppoſed to be due, ſhall be guilty of felony, and ſuffer death.

When the pay-books are cloſed, tickets ſhall be made out, on application to the navy-board, to the ſeamen who ſhall not have received their wages; and ſuch tickets ſhall be paid in courſe once a month.

Britiſh governors, miniſters, and conſuls, reſiding at foreign parts, or any two *Britiſh* merchants, are required to provide for ſeafaring men and boys, ſubjects of *Great-Britain*, who ſhall be in foreign parts by ſhipwreck, capture, or other unavoidable accidents, or who ſhall be diſcharged as unſerviceable from the *Britiſh* navy, and ſubſiſt them at ſixpence *per diem* each, and ſend them home as ſoon as poſſible in any *Britiſh* ſhips.

The bills of their diſburſements, with vouchers, are to be ſent to the navy-board, who are to cauſe immediate payment. And every maſter of a ſhip is to take ſo many as the ſaid governors, &c. ſhall direct, not exceeding four to every hundred tons. Such maſters to be allowed ſixpence *per diem*, for all ſuch as ſhall exceed their complement, upon producing a certificate from the governors, &c. of the number taken on board, and making affidavit of the time they were ſubſiſted, and that they did not want of their complement, or how many they did want of their complement, and for what time.

No volunteer ſhall be liable to be taken out of his majeſty's ſervice by any proceſs, except for ſome criminal matter, unleſs for a real debt, and unleſs the plaintiff, or ſome other perſon in his behalf, make affidavit that to his knowledge, the ſum due to the plaintiff with coſts of ſuit amounts to 20l. at leaſt, a memorandum of which oath is to be marked on the back of the writ or proceſs, for which no fee ſhall be taken; and if any perſon ſhall be arreſted contrary to the intent of this act, any judge of ſuch court may examine into the ſame on oath, and diſcharge ſuch ſeaman without fees, on proof of his belonging to one of the king's ſhips, and being arreſted contrary to the intent of this act; and may award reaſonable coſts, for recovery whereof he ſhall have the ſame remedy as the plaintiff, if he had judgment.

But plaintiffs, upon notice firſt given in writing to ſuch ſeaman, or leſt at his laſt place of abode, may file a common appearance, ſo as to entitle them to proceed to judgment and outlawry, and to have an execution thereupon, except againſt the bodies of ſuch ſeamen.

Perſons employed to receive ſeamens' wages, prize-money, &c. ſhall take no more than ſix-pence in the pound; and if they ſhall take any more, to forfeit 50l. with full coſts

coſts of ſuit, to the proſecutor: And if ſuch perſon belong to any office in the navy, he ſhall loſe his place, and be incapable of holding any place of profit in any ſuch office.

All perſons in offices belonging to the navy taking fees, contrary to this act, are liable to the ſame penalty.

Of *Conſuls.*

OF all the commercial inſtitutions eſtabliſhed by modern nations, for the protection of the rights and privileges of merchants, maſters of ſhips, and mariners, trading to and reſiding in each other's dominions, none deſerves our attention more than that of the appointment of conſuls, whoſe office, duties, privileges, and powers, will be the ſubject of this chapter. It is a high-ſounding title; but bears no affinity to that of the conſuls of the ancient *Roman* commonwealth, who were ſupreme magiſtrates, generals, and legiſlators: Whereas the officer we are now treating of has no juriſdiction beyond the limits of commercial concerns, neither does his authority extend to any perſons who are not the natural-born ſubjects of the prince from whom he receives his commiſſion.

The inſtitution has been found ſo neceſſary and uſeful, that all the maritime powers of *Europe* have adopted it. Conſuls from each reſide in the ſea-port towns, and, in ſome inſtances, in the capitals of the different nations with whom they reſpectively carry on any conſiderable commerce. In *France*, they have likewiſe a conſular office and juriſdiction of an eſpecial nature, being inſtituted for the internal regulation of trade and commerce in their own ports. But as theſe have no relation to the general eſtabliſhment of conſuls in foreign countries, I ſhall refer thoſe, who may have any particular intereſts in ſuch a detail, to the very long and accurate account of the *French judge-conſuls* in *Poſſlethwayte's univerſal dictionary of trade and commerce, article* CONSULS; *tranſlated from the French of Monſ.* SAVARY, *Folio, 2 Vols. Fourth Edit. Lond.* 1774; and ſhall proceed to the appointment of *Britiſh* conſuls.

Our conſuls were originally elected by the *Britiſh* merchants, reſiding in foreign ports, from amongſt their own body; and being recommended by them to the ſecretary of ſtate for the department in which the ports were ſituated, the ſecretary laid the recommendation before the king, who confirmed the election, and iſſued the commiſſion under his ſign manual accordingly: This laudable cuſtom was founded upon clear demonſtration, that merchants reſiding upon the ſpot were the beſt judges of the commercial intereſt of their own country, and beſt able to promote its increaſe, and to prevent its diminution. But, in proceſs of time, the corruption of court favour and court influence extended itſelf to this as well as to all other offices held under the crown. Miniſters of ſtate eſtabliſhed a claim to diſpoſe of all offices of honour and profit, ſubject to the juriſdiction of their reſpective departments. Their recommendation, then, whether proceeding from friendſhip or purchaſe, was ſubſtituted in the place of that of the merchant; and men were appointed from home, who were ſo far from being qualified, that very often they had not had a commercial education. At preſent the appointment lies with the two ſecretaries of ſtate for the *Southern* and the *Northern* provinces. The *Northern* ſecretary appoints all the conſuls reſiding in the *Northern* kingdoms of *Europe*, and the *Southern* all thoſe reſiding in the ſouth. Some of our commercial corporate companies, however, ſtill retain the privilege of appointing their own conſuls.

One reaſon aſſigned for a revolution in the mode of appointing our conſuls was, that the office of a conſul was incompatible with that of a merchant, and that it was impoſ-

ſible

ſible for him to maintain the dignity of his office if he carried on trade upon his own account; for it might induce him to act partially upon many occaſions. This is ſo far true, that conſuls ought not to be ſuffered to trade; for, having ſalaries annexed to their office, they ought to decline all commercial intereſt from the time of their appointment; and this rule being obſerved, the propriety of appointing men who have been brought up in the mercantile line ſtill remains in full force. The *French* ſtrictly enjoin their conſuls in all foreign countries not to carry on any commerce whatever, under penalty of diſmiſſion from their office. But the *Britiſh* conſuls, contrary to ſound policy, are ſtill permitted to trade in all the ports where it is not prohibited, as it ought to be, by the ſovereign of the country. This remark will be juſtified, when we come to the conſideration of the peculiar duties of their ſtation.

The admiſſion of a conſul to reſide and exerciſe his functions in any part of the dominions of a foreign power depends upon circumſtances. Where the right of ſending conſuls to reſide in each other's dominions is expreſsly ſtipulated in commercial treaties, ſubſiſting between the crown of *Great-Britain* and the *States* to whom they are ſent, they may object to the perſon appointed, and by their ambaſſador make requiſition for the appointment of another, aſſigning proper reaſons for their rejection of the firſt; but they cannot reject the king's commiſſion: Whereas thoſe potentates with whom we have no commercial treaties, ſtipulating the appointment of a conſul, may not only refuſe the perſon but the commiſſion itſelf, without violation of the peace and amity ſubſiſting between the powers ſo refuſing and this country; for the law of nations does not include this appointment; however, it is uſual to grant permiſſion. Yet the difference is eſſential; for the conſul, whoſe reſidence is founded upon a treaty, may proceed to much greater lengths, in the exerciſe of his authority, than he who is only admitted by permiſſion; every point, however clear, will be diſputed with the latter by the magiſtracy of the place where he reſides, jealous of their own juriſdiction, and they will be ſupported by their ſovereign and his miniſters. This diſtinction was not noticed in any of our commercial works; and it is only by experience that the editor of this has been enabled to inſert it, the *Britiſh* conſuls in the *Auſtrian Netherlands* being on ſufferance only. And, that we may eſtabliſh this diſtinction upon proper authority, here follow the copies of two commiſſions, the firſt founded upon treaty, the ſecond on permiſſion only. They were formerly iſſued in *Latin*; but, ſince our language has been perfectly underſtood in all the courts of *Europe*, the practice has been diſuſed, and therefore it is unneceſſary to give the *Latin* form, as inſerted in former editions of this work.

I.

GEORGE, R.

GEORGE the ſecond, by the grace of God, of *Great-Britain*, *France*, and *Ireland*, king, defender of the faith, &c. to all and ſingular to whom theſe preſents ſhall come, greeting. Whereas it hath been found expedient that ſome perſon of known probity be appointed to act as conſul in the town of *Alicant*, in the kingdom of *Spain*, and to take care of the commerce of our ſubjects, who reſide or commonly go there to trade; Know ye, therefore, that We, entirely confiding in the probity, affection, prudence, and experience, eſpecially in mercantile affairs, of our truſty and faithful ſubject, *Samuel Tucker*, gentleman, have nominated and appointed, and by theſe preſents do nominate and appoint *him* our conſul in the ſaid town of *Alicant*, together with all its members and appurtenances; giving and granting unto him full power and commiſſion to aid and protect all our ſubjects that inhabit or frequent the ſaid town, its territories and juriſdiction, or who do, or who ſhall carry on a trade, or tranſact buſineſs in thoſe parts, harbour, and coaſts; adviſing and aſſiſting them, agreeable to the articles and treaties of peace and alliance relating to trade, and firmly concluded between the crowns of *Great-Britain* and *Spain*, and their reſpective dominions; and to defend our ſubjects, in caſe of need,

in their trade, goods, and whatſoever elſe ſhall appertain unto them, before all judges and magiſtrates; and to take cognizance of, determine, and compoſe all differences, controverſies, and litigations, which do or may happen between them; and to defend and preſerve them in every thing relating to their right, liberty, and freedom of mutual trade and commerce; and further, to ſubſtitute, as he ſhall think fit, one or more deputies, or vice-conſuls, to act for him in all and every of the aforeſaid places; and to do all and every thing which may promote the good of our ſubjects, the increaſe of mutual friendſhip between the two kingdoms and people, and the freedom and ſecurity of commerce: And further, that he uſe and enjoy all and every the rights, honours, immunities, liberties, and emoluments, which any other conſul in the aforeſaid town did or could of right enjoy. And we earneſtly intreat the moſt ſerene and potent catholick king our brother, and we deſire all others whom it may in any wiſe concern, in a friendly manner, what we ſtrictly enjoin all our ſubjects by theſe preſents, that they acknowledge and admit the ſaid *Samuel Tucker* as our conſul in the aforeſaid town. In witneſs whereof, we have cauſed theſe our letters to be made patent, and ſigned and ſealed with our own hand. Given in our palace at *St. James's* the eleventh day of *December*, in the year of our Lord one thouſand ſeven hundred and twenty-eight, and in the ſecond year of our reign.

By his majeſty's command,

HOLLES NEWCASTLE.

II.

GEORGE R.

GEORGE the third, by the grace of God, king of *Great-Britain*, *France*, and *Ireland*, defender of the faith, &c. To our truſty and well-beloved *Michael Hatton*, eſq. greeting. Whereas we have thought fit, for the advancement of trade and commerce in the ſeveral ports of *Oſtend*, *Nieuport*, and *Bruges*, in the province of *Flanders*, to conſtitute a proper perſon to be our conſul in thoſe ports, who may, as there ſhall be occaſion, countenance and protect our ſubjects, being merchants there; we, in conſideration of the good teſtimony we have received of your loyalty to us, and of your ability to ſerve the ſaid merchants, in the execution of the office of conſul in thoſe ports, do, by theſe preſents, conſtitute and appoint you, the ſaid *Michael Hatton*, to be our conſul in the ſaid ports of *Oſtend*, *Nieuport*, and *Bruges*, together with all their members and dependencies in the ſaid province of *Flanders*, and over all our ſubjects who inhabit, frequent, or trade to the ſaid ports, their members or territories; to have, hold, exerciſe and enjoy the ſaid office of our conſul, by yourſelf, or your ſufficient deputy or deputies, for and during our pleaſure, with all and ſingular the rights, profits, privileges, and immunities which you yourſelf have, or any other conſul heretofore hath enjoyed, or which any of our conſuls do or ought to have and enjoy, in any of the dominions of any princes or ſtates where conſuls uſually reſide; and we do hereby enjoin and require all our ſubjects dwelling in, frequenting, or trading to the ſaid places or ports, to pay that reſpect which is due to you as our conſul, and to your deputy. Given at our court at *St. James's* the twentieth day of *February*, 1761, in the firſt year of our reign,

By his majeſty's command,

HOLDERNESS.

The *Britiſh* conſul has no right to return home, even for a ſhort ſpace of time, without applying for leave of abſence to the ſecretary of ſtate; which having obtained, he is to

appoint a deputy or deputies to take care of the commercial affairs of his nation during his abſence: Theſe are no more than temporary deputies, and are generally merchants of the place. But if the conſul, holding ſome other appointment from the crown, is abſent for a conſiderable length of time, or, being infirm, obtains leave to remain in his native country, the deputy, appointed to reſide conſtantly for him, may be appointed by him; but he muſt be preſented to the ſecretary of ſtate, and being approved by him as the ſufficient depury under the commiſſion, he becomes an officer of the crown, takes the title of VICE-CONSUL, and carries on a correſpondence with the publick officers, in every reſpect the ſame as the conſul: And, though his commiſſion is ſigned by the conſul, being a copy of his own with the requiſite alterations, he has no power to remove the vice-conſul, ſo appointed, without the approbation of the ſecretary of ſtate. If there are any ſubordinate deputyſhips within the juriſdiction of the conſulſhip, it is the vice-conſul, in this caſe, who is to appoint perſons to act in thoſe ſtations, not the conſul, who has given up the entire authority he held under the king's commiſſion.

In ſome countries, as in *Portugal*, *Spain*, and *Italy*, where there is a ſcarcity of *Britiſh* ſubjects, it has been cuſtomary for the conſul-general to appoint natives of ſuch countries to act as their deputies at inferior ports; but this is an unwarrantable and impolitick practice, founded, like many others, upon avaricious principles in our great men, whoſe ſalaries are amply ſufficient to enable them to ſend for deputies from home.

A conſul is not, in the literal ſenſe of the word, a publick miniſter; but it is a miſtake to aſſert, that he has no ſtate affairs to tranſact; for it is expected from him, that he ſhould correſpond with the ambaſſador from his ſovereign reſiding at the court of the prince within whoſe dominions his conſular ſtation lies, and ſend him information of any tranſactions, of what nature ſoever, which may prove detrimental to the political or commercial intereſts of his king and country. And, in caſe there is no ambaſſador or other publick miniſter reſiding at the ſaid court, he is to tranſmit his intelligence directly home to the ſecretary of ſtate, under whoſe department he ſerves.

But though the conſul be not a publick miniſter, under the protection of the law of nations, he enjoys ſome important privileges, annexed to his office, which diſtinguiſh him from the private inhabitants of the place where he reſides. Theſe, where the conſul is admitted only by permiſſion from the prince or ſtate, are regulated generally by the cuſtomary privileges granted to them in countries where the right of fixing conſuls is founded upon treaties. The principal are, a free entry for his furniture and baggage upon his firſt eſtabliſhment—An exemption from the exciſes, or inland duties on liquors, and other articles of conſumption, for himſelf and family—A ſeat on the bench with the magiſtrates of the place, when obliged to appear at their aſſemblies to act as counſel for the ſubjects of his nation, in all caſes of diſpute between them and the natives of the place—An exemption from lodging the military in his houſe—A guard, when required, to aid and aſſiſt him in the maintenance of his authority over the ſubjects of his own country trading to the port; which, however, does not extend to thoſe who are conſtantly reſident in the place, and who, in all caſes, whether civil or criminal, as well as the conſul himſelf, are ſubject to the juriſdiction of the country—The privilege of receiving a polite meſſage from the magiſtrates, requeſting his attendance, when neceſſary, at their aſſemblies, inſtead of a formal ſummons or citation, which, if he means to ſupport the dignity of his ſovereign, he muſt never obey. There are likewiſe ſome trifling perſonal advantages; but, as they do not affect his office, it is better to leave it to the good ſenſe of the conſul to diſcover, and uſe them with diſcretion, than to mention them as precedents in this place, leſt they ſhould be too eagerly contended for, to the detriment of the commercial intereſts of his country.

That the difference between a conſul and a publick miniſter may appear in the moſt ſtriking point of view, the following caſe, inſerted in the former editions of this work, is reprinted.

The governor of *Cadiz*, having once affronted and confined the *Dutch* conſul, the *States General* complained thereof to the court of *Madrid*, as of a violence done to the *law of nations*, inſtead of urging the non-execution of thoſe treaties, from which alone they ought to have expected ſafety for their pretended miniſter, and not elſewhere. Some years ſince, they attempted to make their *conſul*, who reſided at *Genoa*, paſs for a publick miniſter; but the *Senate* wrote them, that it did not acknowledge him as ſuch, and that

that all which it could grant, or they expect for him, was the peaceable fruition of those rights and privileges, which cuſtom had beſtowed on this kind of employment: The generality of conſuls are only merchants, who, notwithſtanding their office of *judge in the controverſies* that may ariſe among thoſe of their own nation, carry on at the ſame time a traffic, and are liable to the laws of the place where they reſide, as well in civil as in criminal matters, which is altogether inconſiſtent with the quality of a public miniſter; though where it is otherwiſe, and a conſul does not trade, I think a proportionable regard and reſpect ought to be paid, as due to his character. *Wicſqueort's* Rights of Ambaſſadors. P. 40.

In the year 1634, the republic of *Venice* had almoſt broke with pope *Urban* VIII. on account of the violence offered by the governor of *Ancona* to the conſul of that ſage ſenate, who, in ſtate and maritime affairs, ſtands in the foremoſt rank of perceptors.

The conſul's name was *Michael Oberti*, a native of *Bergamo*, whoſe family had diſcharged that office for many years; but the governor ſuſpecting his having given ſome advices, that occaſioned the republic's gallies to take ſome ſmall veſſels belonging to *Raguſa*, for having ſmuggled the duties that are paid in the gulf, ſo perſecuted the conſul, that he was forced on a voyage to *Venice*, to acquaint the ſenate therewith. He was no ſooner departed, than the governor put a garriſon in his houſe, and carried off his furniture and papers, even thoſe which related to the functions of his employment; the ſenate complained hereof, and demanded reparation with ſo much warmth, that the *French* ambaſſador, apprehending they might proceed to an open rupture with the *pope*, endeavoured to adjuſt the difference to the ſatisfaction of the parties offended; but before the accommodation could be perfected, the governor cauſed the conſul to be ſummoned, and for contumacy condemned him to baniſhment, under the pretext, that during the contagion which reigned, he had unladed goods contrary to the prohibition. There was more of paſſion than juſtice in this ſentence, as *Oberti* could prove that he had done nothing without the magiſtrate's approbation; ſo that this iniquitous and unjuſt proceeding gave more offence to the ſenate thanthe firſt, and a repetition of the *French* ambaſſador's good offices was neceſſary, to diſpoſe the minds of the jarring parties to an accommodation, which he at laſt accompliſhed, upon condition, *that the governor ſhould repeal the outlawry and ſuffer* Oberti's *re-eſtabliſhment; and that the ſenate, who ſhould afterwards recall* Oberti, *ſhould ſubſtitute in his place whomſoever it pleaſed* *Michael* dying before all this could be executed, the ſenate put his brother in his room; but this laſt was no ſooner arrived at *Ancona*, than the governor cauſed him to be impriſoned, and would not releaſe him till he had given ſecurity for his leaving the town, and not returning.

The *French* miniſters, who had laboured in the reconciliation, and engaged their words for performance of the conditions, which, as above expreſſed, allowed the *Venetians* to nominate any other for conſul that they ſhould think fit, were very much chagrined at this proceeding; and the ſenate, to ſhew its reſentment, refuſed audience to the nuncio, and forbad its ambaſſador to aſk one of the pope, till they had received ample ſatisfaction, which the governor was forced to give.

We ſhall now give a general ſketch of the functions of a *Britiſh* conſul reſiding in a foreign port, and of the reſpect and obedience due to him from his fellow ſubjects, being merchants, maſters of ſhips, or mariners, reſorting to the ſaid port, a ſubject which has been ſo totally neglected by our commercial writers, that it is high time to ſupply the deficiency.

A *Britiſh* conſul, in order to be properly qualified for his employment, ſhould take care to make himſelf maſter of the language uſed by the court and the magiſtracy of the country where he reſides. If the common people of the port uſe another, he muſt acquire that alſo, that he may be enabled to ſettle little differences, without troubling the magiſtracy of the place for the interpoſition of their authority. Such are accidents happening in the harbour, of the ſhips of one nation running foul of and doing damage to each other, &c. At *Oſtend*, the vulgar tongue is *Flemiſh*, but public buſineſs with the magiſtracy and with the court of *Bruſſels* is tranſacted in the *French* language.

At his firſt eſtabliſhment, he ſhould procure a TARIFF, or ſpecification of the import duties on all commodities arriving at his port from *Great-Britain* or *Ireland*. Alſo, of the duties on all commodities exported from the ſaid port, and deſtined for any port belonging to the dominions of his ſovereign. He muſt take eſpecial notice of all prohibitions to prevent the export or import of any articles, as well on the part of the ſtate wherein

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he reſides, as of the king his maſter; that he may admoniſh all *Britiſh* ſubjects againſt carrying on an illicit commerce to the detriment of the revenues, and in violation of the laws of either. And it is the more eſſential, that he ſhould attend diligently to this part of his duty, becauſe there are merchants and factors in every country, who for ſelfiſh ends will encourage ſmuggling, and hazard the detenſion, nay, even the confiſcation of ſhips, and the impriſonment of the maſters and mariners to the great injury of owners, freighters, and other parties concerned.

It is his duty likewiſe to make himſelf maſter of the municipal laws of the country; and of all the ordinances of the magiſtracy, that his fellow ſubjects may not be involved in difficulties and diſtreſſes, through ignorances, or be fined and impriſoned through the artifices of extortionate farmers of the inland exciſes, or mercenary officers of the police, reſembling our trading juſtices. They are to conſider themſelves as the lawful protectors of all *Britiſh* ſubjects trading to, reſiding in, or travelling through the places within their juriſdiction, but more eſpecially of all maſters of *Britiſh* ſhips and mariners: They are not to ſuffer the natives to offer them any inſult, or do them any wrong, nor the cuſtom-houſe or other officers of the government of the country to impoſe on them, illegally to detain their perſons, ſhips, or merchandiſe, or exact money from them on fraudulent pretexts; and in all caſes of this nature, when the conſuls cannot obtain redreſs from the adminiſtration on the ſpot, they are to preſer their complaint by memorial to the *Britiſh* miniſter, reſiding at the courts on which their conſulſhips depend. If there is no ſuch miniſter, they are to tranſmit the memorial themſelves to the court, and failing of redreſs, if the complaint be well founded and important, the ſame ſhould be tranſmitted to his majeſty's principal ſecretary of ſtate for that province. They have a right to demand audience of the prime miniſter or miniſter of the ſovereign or ſtate wherein they reſide, as perſons inveſted with public characters, in the abſence or non-reſidence of ambaſſadors, or other public miniſters from their own ſovereign. The editor had frequent occaſion to demand it in the abſence of the late Sir *James Porter*, his majeſty's miniſter plenipotentiary at the court of *Bruſſels*, and he always obtained it with great politeneſs from the late *Count Cobentzel*, prime miniſter for the *Auſtrian Netherlands*, a moſt accompliſhed ſtateſman—and from his late royal highneſs prince *Charles* of *Lorraine*, uncle to the preſent emperor, governor general of the Low Countries.

If any inſult or outrage is offered to the inhabitants of the country where *Britiſh* conſuls reſide, by *Britiſh* ſubjects, the magiſtrates before they proceed to the puniſhment of the offenders, will uſually complain to the conſuls, who ought to interpoſe their authority, to ſummon the offending parties before them, and, if they will not appear voluntarily, to compel them by an armed force: Upon their appearing, he is to order them to make immediate ſatisfaction, and, if they refuſe this, he muſt reſign them to the civil juriſdiction of the magiſtrates, or to the military law of the garriſon; always perſiſting, however, in being preſent, and acting as counſel or advocate, upon all trials of *Britiſh* ſubjects, whether their lives or properties be at ſtake. But if an accuſation is brought againſt them for offences, alledged to have been committed within the dominions or juriſdiction at ſea of their natural ſovereign, it is the duty of a *Britiſh* conſul to claim cognizance of the cauſe for his ſovereign; to inſiſt upon the releaſe of the parties, if detained in priſon by the magiſtracy of the place, on any ſuch accuſation brought before them; and that all judicial proceedings againſt them do inſtantly ceaſe. He is likewiſe to demand the aid of the power of the country, civil and military, to enable him to ſecure and put the accuſed parties on board ſuch *Britiſh* ſhip as he ſhall judge fit, that they may be conveyed to *Great Britain*, to be tried by their proper judges.

A remarkable caſe of this kind happened in the beginning of the year 1768, at *Oſtend*. *Peter Horſeman*, maſter of a merchant-ſhip, was driven into that port by ſtreſs of weather, being bound for *Hamburgh* from *Seville*. On his paſſage he had anchored ſome days off the *Mother-Bank*, *Spithead*, and during this time his ſailors, as he alledged, had *mutinied*, and ſigned a *Round Robin**. Upon coming on ſhore, the *Britiſh* vice-conſul, *Mortimer*, being abſent, his duty having called him for a few days to *Dunkirk*, he laid a charge of mutiny againſt three of his men before the magiſtrates, who cauſed them to be

* A ſea-term for a mutinous conſpiracy againſt the captain, in which the perſons ſigning the agreement write their names in a circle round the paper, ſo that it may not appear who was the firſt or ringleader.

be arreſted by their officers, threw them into priſon, loaded them with irons, and would have proceeded to trial; but upon the vice-conſul's return he preſented a memorial, inſiſting that the men ſhould be releaſed, and given up to him, in order to their being ſent to *England*, conſigned to the lord warden of the port of *Dover*, to be by him detained till orders ſhould arrive concerning them from the court of admiralty, the offence, if committed at all, having happened within the territorial juriſdiction of the king of *Great Britain*. The magiſtrates of *Oſtend* perſiſted in maintaining their civil juriſdiction over the priſoners, and prepared without delay for the trial. The *Britiſh* vice-conſul drew up a memorial, and tranſmitted it to Sir *William Gordon*, his majeſty's miniſter at *Bruſſels:* That court gave evaſive anſwers; and the vice-conſul, finding the lives of *Britiſh* mariners at ſtake, applied to the board of admiralty at *London*, ſtating the caſe. The lords of the admiralty ſent the caſe to their ſolicitor, who gave it as his opinion, that the vice-conſul was perfectly in the right; and that lord *Weymouth*, ſecretary of ſtate for the *Northern* department, ought to lay the matter before the king, in ſuch manner that the *Imperial* ambaſſador ſhould be required inſtantly to write to *Vienna*, that orders might be given to the government of *Bruſſels* to ſtop all judicial proceedings againſt the ſaid ſailors, and to releaſe them, which was done accordingly.

It is the duty of *Britiſh* conſuls to recover all wrecks, or cables, anchors, &c. belonging to the king's ſhips, found at ſea by the fiſhermen, or other perſons, and brought into the ports where they reſide; to pay the accuſtomary ſalvage, and to inform the naval-board in *England* of his proceedings thereon; alſo, to relieve all diſtreſſed *Britiſh* mariners, to allow them *ſix-pence* daily for their ſupport, to ſend them home in the firſt *Britiſh* veſſels that ſail for *England*, and to keep a regular account of his diſburſements, which he is to tranſmit yearly, or oftner if required, to the navy-office, atteſted by two *Britiſh* merchants of the place.

He muſt likewiſe give free paſſes to all poor *Britiſh* ſubjects wiſhing to return home, directed to the captains of the king's pacquet-boats, or ſhips of war, requiring them to take them on board.

No merchant-ſhip of this nation ſhall leave the port wherein a *Britiſh* conſul reſides without his *Paſſport*, which he ſhall not grant till all juſt demands on the maſter and the crew from the government of the country be ſatisfied, and, for this effect, he ought to ſee the governor's paſs, if a garriſoned town, or the burgomaſter's; unleſs the merchant or factor, to whom the ſhip was conſigned, makes himſelf reſponſible for all conſequences.

The conſul is the natural arbitrator between the maſter's of *Britiſh* ſhips and the freighters, being inhabitants of the place wherein he reſides, and he muſt therefore attend, if required, at all arbitrations where property is concerned.

His fees are regularly eſtabliſhed in countries where large factories of his nation are ſettled: In ſome places they are regulated by the burthen of the ſhip, in others by the length of the voyage; but where there is no fixed rule, they are regulated by precedent. And it is remarkable, that the conſuls of other nations are protected by the ſovereigns, and authoriſed to take the conſul's fees; but the *Britiſh* have not any authority whatever to ſupport their claim, where there is no commercial treaty. If a maſter refuſes to pay, he cannot detain the ſhip; for the owners and freighters would bring their actions for damages: But that excellent chancellor, Lord *Hardwiche*, held, that the conſul might ſend on board, and ſeize any piece of valuable furniture belonging to the cabin, which would not hinder the navigation of the ſhip, and detain it for his fee.

Another hardſhip upon *Britiſh* conſuls is, that they are often obliged to impriſon diſorderly ſeamen, upon the complaint of their maſters, as an indiſpenſable duty of their office; yet every one of theſe ſeamen has it in his power to bring his action againſt the conſul for falſe impriſonment in the courts of law in *England*, when it is probable the maſter is on a voyage in ſome other part of the world.

Therefore, it is the duty of the conſul to be very cautious how he confines or puniſhes *Britiſh* ſeamen, or maſters of ſhips, upon their mutual complaints againſt each other; and to keep a regular and well-atteſted account, fairly written in a book for that purpoſe, of all his official tranſactions, enfering therein—the date of the arrival of every *Britiſh* ſhip, the maſter's name, name of the ſhip, burthen, quality of lading, place from whence ſhe came, to whom conſigned, and his departure.

Britiſh conſuls ſhould ſtrictly mark the progreſs of the commerce of other nations in the places of their reſidence, ſtudy the means of improving that of their own, and tranſ-

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mit intelligence to the ſecretary of ſtate, when it is upon the decline, aſſigning the cauſes, and propoſing ſuitable remedies.

Laſtly, with reſpect to religion, they are to take care to give no offence themſelves, nor ſuffer any inſult or indecency to be offered by *Britiſh* ſubject to the eſtabliſhed religion of the country; neither are they to make a publick profeſſion of their own, nor to hold aſſemblies for Proteſtant worſhip in Roman Catholic countries, unleſs expreſsly ſtipulated by treaty, or permitted: But, on the other hand, being always allowed the free exerciſe thereof privately in their own houſes, they are not to be moleſted therein, nor are they to be prevented attending or aſſembling at the houſes of their conſuls for ſuch purpoſes: And the ſaid conſuls are to take care that no Proteſtant be forced to comply with any of the rites and ceremonies of the religion of the country; ſuch as compelling parents to ſend their children to be baptiſed by their prieſts, or to be educated in the Romiſh faith. Neither are they to ſuffer the ſeizure of any bibles, common prayers, or other religious books, in the houſes of *Britiſh* ſubjects, though ſuch books, are ſtrictly prohibited by the laws of the country to other inhabitants. And, as caſes of this kind ſometimes happen, it may not be improper to obſerve, that a book taken out of a houſe, by a prieſt or friar, ſhould be claimed as the common property of the owner; and the offender ſhould be proceeded againſt at common law, not by memorial; the common law of every country affording relief in ſuch inſtances.

The office of a *Britiſh* conſul is much more difficult in time of WAR than in time of PEACE; eſpecially on account of the great care he muſt take to prevent any violation of the neutrality of the port in which he reſides, by the maſters of *Britiſh* merchant ſhips: for which reaſon, and becauſe the ſyſtem of the maritime powers of *Europe* has juſt undergone a revolution tending to diminiſh and reſtrain that univerſal empire of the ſeas heretofore claimed and maintained by *Great Britain*, we have thought it right to introduce a new chapter, on the Freedom of Navigation, immediately after the preſent, and before that on inſurance, as they ſeem to be ſubjects intimately connected; for it is part of the conſul's duty to inform the owners or under-writers of a ſhip, if required, whether the maſter has or has not made void the policy of inſurance by violating the Freedom of Navigation, or the neutrality of ports.

Of *Freedom* of *Navigation.*

ALTHOUGH it cannot be expected that merchants ſhould ſtudy thoroughly all the laws of nations, yet it may be ſuppoſed that moſt of them know ſomething of the contents of the treaties of commerce; and that there is a difference in the *Treaties* of commerce between *England* and *Denmark* and *Sweden*, and between *England* and *Holland*, and *England* and *France* and *Spain*; and that only between the four laſt, the rule "of *free* ſhips making *free goods*, though belonging to enemies, except contraband," had been reciprocally eſtabliſhed; however, for the uſe of thoſe who may be deſirous to know what paſſed with regard to navigation in former wars, as well as the late, I here ſubjoin ſome remarkable paſſages which I have met with on this ſubject, with ſome obſervations that may conſiderably elucidate it.

From the letters written by that great ſtateſman *John de Witt*, penſionary of *Holland*, and others received from the *Dutch* ambaſſadors employed at the courts of *France* and *England* during his miniſtry, which were publiſhed at the *Hague* 1723-24, in four parts in 4to, it appears that this miniſter, being ſenſible that *Holland's* wealth depended chiefly upon keeping peace, and having a free and unmoleſted navigation from and to all parts, laboured hard to obtain from *England* and *France*, by particular treaties of commerce, the conceſſion that free ſhips ſhould give freedom to all goods, even thoſe belonging to enemies, except contraband.—His letters wrote to, and thoſe received from, *William Boreel*, in 1653-54, part I. page 77, 78, ſhew that *France* by a proviſional treaty made in 1646, and by a declaration of the *French* king in 1651, having allowed this rule to the *Dutch*, was the firſt who deviated from it. Mr. *Boreel* writes, page 66, 68, "They "now

" now ſay that their enemies ought not to be protected nor ſerved by ſhips of the ſtates, " in carrying their goods: That ſuch goods would be taken out of the *Dutch* ſhips, and " confiſcated as good prize:" He adds, " and the *French* may perhaps even fall upon " maintaining their old maxim, *Que la robe d'ennemi confiſque celle d'ami.*"—His letters wrote to, and thoſe received from, *William Nieupoort*, 1656, part III. page 226, 230, 332, 340, 426, 427, ſhow that the *Dutch* never could obtain from *England*, during the time of *Oliver Cromwell*, that this rule ſhould be allowed; and it ſeems that *England*, conſidering herſelf to be the firſt of the maritime powers, thought it more political that *Holland* ſhould always remain in the ſame intereſt, and go along with her. We find in Aiſtma, or *Aitzema*, 36th book of ſtate affairs and of war, *Anno* 1656, that upon Mr. *Nieupoort*'s ſo often repeated ſolicitations about the marine treaty, the anſwer given by the *Engliſh* was; that the demand of " free ſhips, free goods." and paſſport to their form, was very unjuſt; and the reaſons they alledged are as ſtrong as any that have been made uſe of ſince.

Here follow *extracts* from the *letters* written by the *Dutch* miniſters in *France* and *England*, to the penſionary *J. de Witt*, at the *Hague*, from 1653 to 1657.—*W. Boreel*, the *Dutch* ambaſſador at *Paris*, to the penſionary, *December* 26, 1653.—" I perceive well enough that *France* would go farther in regard to the marine treaty, which I am ſoliciting, if the war with *Spain* was not a hindrance.—They now maintain the maxim, that their enemies muſt in no manner be protected or ſerved by any of the ſhips belonging to the ſubjects of their high mightineſſes, for the carrying their goods, on peril, that if any ſuch goods be met with in *Dutch* ſhips, they ſhall be made good prize, and as ſuch be taken out and confiſcated: Which however is departing from a law they maintained in former times, under *Francis* the firſt, and *Henry* the third, which was *Que la robe d'ennemi confiſque celle d'ami:* Whereas now in *Dutch* ſhips the goods belonging to their, and other neutral, ſubjects ſhall not be confiſcated. I have made all poſſible endeavours to obtain, that free ſhips ſhould make free goods, but as yet without ſucceſs."

—— From penſionary *De Witt's* anſwer, 8th of *January*, 1654,—" I obſerve from your's of the 26th of *December* that, notwithſtanding you uſed all your endeavours you could not obtain that free ſhips ſhould make free goods; whereupon I cannot but believe that the French miniſters muſt miſapprehend the matter, or you explain it wrong; ſince in the draughts of the treaty ſent over, it ſtands clearly explained, that free ſhips ſhall make free goods; *Que les navires qui traffiqueront & ſeront libres rendront auſſi tout leur charge libre, bien qu'il y eut dedans de la marchandiſe, même des grains & legumes, appartenants aux ennemis.*"—From Mr. *Boreel*'s letter, *Paris*, 15th of *January*, 1654.—" It is true, that taking the ſenſe of the words from the firſt article of the proviſional treaty, together with the 18th article of this propoſed treaty, they confirm clearly your opinion: But they ſay that by the words, a free ſhip ſhall make free goods, are only meant goods of friends, but not of enemies. And in the ſame manner they miſconſtrue the declaration of the 29th of *May*, 1651, which the king made to me, and which is now ſubſiſting, and muſt ſubſiſt till we come to a nearer treaty of marine and alliance: It ſays, *Le roi fait defenſe, &c. de ne point prendre ni amener dans les ports de France des navires Hollandois chargés de marchandiſes, quand même elles appartiendront aux ennemis, pourvu qu'ils ne tranſportent pas aes troupes, marchandiſes de contrabande*, &c. What can be clearer than theſe words? but the people here interpret them as they pleaſe, and make uſe of their power in judging and executing, and although I complain continually, it is without fruit and redreſs."—By theſe letters it appears clear enough, that the *French* firſt began to miſconſtrue the ſenſe of the words of free ſhips making free goods.—From ambaſſador *William Nieupoort*'s letter, *London*, the 12th of *May*, 1756, to the penſionary *De Witt*.—" I am afraid that the gentlemen here will not admit in the treaty of marine, the rule of free ſhips making free goods, and *vice verſâ*; nor agree to the formularies of paſſports propoſed: However, I ſhall uſe my beſt endeavours towards it, and as ſoon as I can obtain any thing from them upon paper I ſhall ſend it over." From a letter of the penſionary, 23d of *February* 1659, to *William Nieupoort*, at *London*.—" And I can aſſure you, that if, by concluding a marine treaty, their high mightineſſes, immediately after having received the draughts ſent of a marine treaty, gave it to the commiſſaries, who, upon taking it into conſideration, quickly diſcovered that the principal point whereupon this treaty ſhould be built, which is to prevent unjuſt ſearches

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when they meet at ſea, viz. that *free ſhips* make *free goods*, was left out; and it is impracticable for the *Dutch* to agree to it in the manner it is propoſed: Wherefore, &c.—From a letter of the penſionary, 23d of *February* 1659, to *William Nieupoort*, at *London*.—"And I can aſſure you, that if, by concluding a marine treaty, their high mightineſſes can only obtain the end propoſed in their laſt reſolutions, though in what they moſt deſire, namely, that free ſhips ſhall make free goods, it ſhould remain deficient, it might take away ſome of the animoſity, and prevent the perſons at the helm from hearkening to any of the advances made by *Spain*, and other potentates, to their high mightineſſes."—Which is enough to ſhew that the great penſionary *De Witt*, whilſt *Cromwell* governed in *England*, could not gain upon him his favourite maxim, "That *free ſhips*, ſhould make *free goods*." However, in king *Charles* the ſecond's reign, this rule was allowed by the *treaty of marine* concluded the 28th of *June*, 1667; and on this occaſion Sir *William Temple*, in a letter of the 21ſt of *May*, 1667, to my lord ambaſſador *Coventry*, writes, "Mr. *Godolphin* aſſured me, "that all parts of the treaty of commerce are ſo much to our deſire and advantage, that he hoped to ſee many a rich man in *England* by it." It would ſeem that Mr. *Godolphin*'s maxim was, that *England* ſhould have nothing ſo much in view as a free navigation for her merchants: And, indeed, this is certainly of the greateſt conſequence; but the way to have made it effectual would have been to be always watchful, and keep a *naval power* ſuperior to that of our neighbours, and not to ſuffer, at the time of treating, part of our naval ſtrength to be ſurpriſed and *burnt* at *Chatham*, the 15th of *June*, by the then vigilant and powerful *Dutch* fleet: By which action, it ſeems, they forwarded the concluſion of ſuch a treaty of marine and peace as they had long deſired in vain.

But, as merchants, it is nor ſo much our buſineſs to enquire whether it was good policy to make ſuch treaties, as to know how long they were ſtrictly kept.—*J. Meerman*, one of the *Dutch* ambaſſadors in *London*, in a letter to the penſionary, dated *February* the 1ſt, 1668, ſays, "that, having complained to the king that the privateers of *Oſtend*, with commiſſions from *Spain*, diſturbed their navigation, his majeſty anſwered, that he had alſo heard of it, and conſidered it as acts of pirates; and he would give orders, if any of his ſubjects ſhould be found on board thoſe privateers, to have them hanged." Mr. *Meerman* further ſays, "it would ſeem as if theſe privateers were not at all acquainted with the fourteenth *article* of the *treaty* of *marque*, concluded by their high mightineſſes with the king of *Spain*, which ſays, that *free ſhips ſhall make free goods*."—In king *William*'s reign, when *England* and *Holland* were allied in a war againſt *France*, they went ſome ſteps farther; for their declarations and notifications made to all courts inform us, "they would not permit any neutral nation to navigate and trade with *France* at all."—It doth not appear that, in the laſt wars, *England* went farther beyond the bounds of *neutrality* than formerly. Hiſtory will afford examples enough, that whatever power gets the better at ſea or land, in time of war, commonly makes the moſt of it: The fair trader always ſuffered by the ſiniſter dealings of the unfair ones; and ſo much as one ſide ſtudied to conceal truths, the other ſtudied to diſcover them.

By an extract from Sir *Leoline Jenkin's Memoirs*, ſee *Maſqued Property*, neutral merchants will perceive, that during the war, *Anno* 1676, ſome uſed to behave in the ſame manner, and that the ſame thing were practiſed, and the ſame conſtructions made in our courts then, as in the laſt wars: we do not find that in *France* or *Spain* they have been dealt with much better, although they might juſtly have expected more favour, ſince thoſe crowns, having hardly had any ſhipping paſs unmoleſted, which would have been much to their advantage, if they who remained maſters of the ſea would have the ſame freedom. But might not thoſe who fought the battles aſk, What ſignifies our being maſters at ſea, if we ſhall not have liberty to ſtop ſhips from ſerving our enemy? And, when we examine to the bottom of the thing, it appears very evident, that ſea-battles are not fought ſo much to kill people, as to be maſters of trade, whereby people live; and, *by ſtopping the ſupplies of our enemies, to compel them in the end to live in friendſhip with us.*

Ships and veſſels belonging to the ſubjects of either of the parties may not only paſs, traffic, and trade from a neutral port or place, to a place in enmity with the other party, or from a place in enmity to a neutral place; but alſo from a port or place in enmity with the other party, whether the ſaid places belong to one and the ſame prince or ſtate,

or

or to ſeveral princes or ſtates, with whom the other party is at war.—*Treaty with Holl.* 1764.

The like freedom of commerce and navigation was agreed upon by the *treaty* of 1676, with *Spain*; and of 1676, with *France*; and confirmed by the ſubſequent and other articles of the treaty of *Utrecht*.

It ſhall be lawful for all and ſingular the ſubjects of the queen of *Great Britain* and of the moſt chriſtian king, to ſail with their ſhips with all manner of liberty and ſecurity, no diſtinction being made who are the proprietors of the merchandizes laden thereon, from any port to the places of thoſe who are now, or ſhall be hereafter at enmity with the queen of *Great Britain* or the moſt chriſtian king: It ſhall likewiſe be lawful for the ſubjects and inhabitants aforeſaid, to ſail with the ſhips and merchandizes afore-mentioned, and to trade with the ſame liberty and ſecurity from the places, ports, and havens of thoſe who are enemies of both or of either party, without any oppoſition or diſturbance whatſoever, not only directly from the places of the enemy afore-mentioned to neutral places, but alſo from one place belonging to an enemy to another place belonging to an enemy, whether they be under the juriſdiction of the ſame prince or under ſeveral. And as it is now ſtipulated concerning ſhips and goods, that *free ſhips ſhall alſo give a freedom to goods*, and that every thing ſhall be deemed to be free and exempt, which ſhall be found on board the ſhips belonging to the ſubjects of either of the confederates, although the whole lading, or any part thereof, ſhould appertain to the *enemies* of either of their majeſties *contraband* goods being always excepted, on the diſcovery whereof, matters ſhall be managed according to the ſenſe of the ſubſequent articles: It is alſo agreed, in like manner, that the ſame liberty be extended to *perſons* who are on board a free ſhip, with this condition, that although they be enemies to both or to either party, they are not to be taken out of that free ſhip, unleſs they are ſoldiers, and in actual ſervice of enemies.—*Treaty with France*, 1713.

As it appears by *Art.* 23, in the *treaty* of 1654, with *Portugal*, that *Oliver Cromwell* agreed with the *Portugueſe* to the rule of "*free ſhips* making *free goods*," which he afterwards would not allow to the *Dutch*, it would ſeem that he had not yet well conſidered how inconſiſtent it was for a nation, whoſe weight chiefly lay in its ſuperiority of maritime ſtrength, to allow this rule to *any* one; or elſe he muſt have more in view, *viz.* That the *Engliſh* nation ſhould reap the chief benefit of the trade from their *Eaſt* and *Weſt Indies*, whilſt they were conteſting for the poſſeſſions thereof with the *Dutch*. The *Portugueſe* in their ſituation at that time muſt have found it difficult to ſupply themſelves; and therefore might well allow, *Art.* 11, "that the people and inhabitants of *Great-Britain* might navigate and trade freely and ſafely from *Portugal* to *Brazil*, paying the duties and cuſtoms which others pay who trade into thoſe countries:" and "that they ſhould have the ſame freedom as had been granted by any former treaty, or ſhould be granted hereafter, to the inhabitants of any other nation in alliance and friendſhip with that crown."—But this freedom ceaſed when they had no longer conteſted about their poſſeſſions; for, as their friends and allies monopolized the trade of thoſe places where they had been admitted, and got footing in the *Eaſt* and *Weſt Indies*, the *Portugueſe* excluded them, in return, from trading to thoſe ſettlements which they ſtill retained.

Remarks.—The treaty of *Utrecht*, with *France*, 1713, was not confirmed by that of *Aix-la-Chapelle*, 1748; a ſort of tacit acknowledgement of that right the *French* had aſſumed, as it ſuited their intereſt, of rejecting the whole of the former treaty, as ſome articles, particularly the 9th could not, by the expreſs tenor of them, take place without an act of parliament; which, however, was never paſſed. The aforementioned treaty with *Holland* of 1667, was confirmed by the treaty of 1674; which is now the maritime regulation between the two powers.—By the 8th *article* of this treaty it is agreed, "that all which ſhall be found on board the veſſels belonging to the ſubjects of either of the contracting parties, ſhall be accounted clear and "*free*, although the whole lading, or any part thereof, ſhall by juſt title of property belong to the *enemies* of the other, *contraband* goods only excepted."—Here, as in the treaty of *Utrecht*, the diſpute is entirely owing to the general terms of the ſtipulation; one ſide taking them in their full extent, while the other inſiſts upon ſuch reſtrictions and limitations to be put upon them, as right reaſon and the nature of things, neceſſarily require; and therefore, in 1758, when the *French*, finding themſelves unable to carry on their own trade in

their own bottoms, reſolved to employ the *Dutch*, and not only exempted their veſſels from the tax of 50 ſous per ton, but opened to them all their ports in *America*, the miſchief of ſuffering the rule to paſs in *general* terms, became notoriouſly manifeſt; and *Great Britain* reſolved to make uſe of thoſe means, which God had put into her hands to remedy it. Accordingly, great numbers of thoſe *Dutch* veſſels were taken, and ſome of them adjudged to be lawful prizes by our court of admiralty.—The States, being extremely vexed to ſee the net which they had ſo cunningly woven, and ſpread over us by the treaty, now prove at length, upon the firſt trial, too weak to hold us, and forcibly broken, did not ſpare to make heavy complaints of the breach. Similar proceedings lately gave riſe, upon occaſion of our late war with *France*, to a warm conteſt between the two moſt natural friends in *Europe*.—Sir *Joſeph Yorke* preſented, on the 21ſt of *March* 1780, a very ſtrong *memorial* to the States General, in which he "enumerates the various points, in which *they* have violated the treaty, by granting convoys to naval ſtores going to *France*, &c. and the abſolute ſilence they have kept as to the formal demands of ſtipulated ſuccours, from the Republic:"—But their high mightineſſes ſtill giving no anſwer thereto, our court publiſhed, on the 17th of *April* 1780, a declaration, "That the ſubjects of the *United Provinces* are henceforward to be conſidered upon the ſame footing with thoſe of *other* neutral ſtates *not privileged by treaty*; and his majeſty doth ſuſpend, proviſionally, till further order, all the particular ſtipulations reſpecting the freedom of navigation and commerce in time of war, of the ſubjects of the *States General*, &c. and more particularly thoſe contained in the treaty of 1674."—On the 3d of *April* 1780, however, a *memorial* was preſented to the *States* by prince *Gallitzin*, on the part of the empreſs of *Ruſſia*, with a copy of a very extraordinary *declaration*, which ſhe had made to the belligerent powers, purporting, "That ſhe was determined to maintain a free trade and navigation of her ſubjects, and not to ſuffer either to be hurt by thoſe powers; that her definition of the limits of a *free trade* is founded upon the cleareſt notions of *natural right*, and that what ſhe called *contraband*, is literally taken from the *treaty* between *Ruſſia* and *Great Britain*, 1734—that ſhe invites the *States General* to make a common cauſe with her; and had made the ſame invitation to the courts of *Copenhagen*, *Stockholm*, and *Liſbon*, in order that by their united endeavours a natural ſyſtem, founded on juſtice, might be eſtabliſhed and legalized in favour of the trade of neutral nations, and ſerve as a rule for future ages."

Of *Inſurances*.

INSURANCE, or ASSURANCE, is a contract or agreement by which one or more particulars, called *inſurers*, *aſſurers*, or *underwriters*, take on them the riſque of the value of the things inſured, in conſideration of a premium paid by the aſſured, and by this means commodiouſly divide the hazard of every adventure, to the great benefit of trade, and the eaſe and advantage of every one concerned therein. Indeed, the utility of this ſpecies of contract in a commercial country, is ſo obvious that it could not eſcape the notice and approbation of our beſt writers upon commercial ſubjects; and their recommendation has not only extended, but conſiderably improved the practice. Inſurances give freſh vigour to the active principles of univerſal commerce, and great ſecurity to the fortunes of private people; for by dividing amongſt many that loſs, which would ruin an individual, it is made to fall light and eaſy on the whole ſociety. The riſk likewiſe, of importation and exportation being thereby diminiſhed, men will more eaſily be

be induced to engage in extenſive commercial connections, to take a ſhare in important concerns, and to unite in hazardous enterprizes, ſince a failure in the object will not be attended with thoſe dreadful conſequences to them and their families, which muſt be the caſe in countries where inſurances are unknown.

Mr. *Molloy*, in his *Jure Maritimo*, and Mr. *Malynes*, in his *Lex Mercatoria*, ſay that *Suetonius*, in his life of *Claudius Cæſar* *, conceives that emperor to have been the firſt who brought in this cuſtom of inſurance, though Monſieur *Savary*, in his *Dictionnaire de Commerce*, imputes it to the *Jews*, in the year 1182. *James Allan Park*, Eſq. the laſt excellent writer upon inſurances, remarks, that the origin of inſurance, like that of many other cuſtoms, which depend rather upon traditional than written evidence, and for the honour of inventing and introducing which rival nations contend, has occaſioned much doubt among the writers upon mercantile law. In fact, it is involved in ſo much obſcurity that, after all the reſearches which he had made on occaſion of his compiling his admirable *Syſtem* of the *Law of Marine Inſurances*, he could not promiſe any very ſatisfactory ſolution of this doubt; but whoever was the firſt contriver, or original inventor of this uſeful branch of buſineſs, it has for many ages been practiſed in this kingdom, and ſuppoſed to have been introduced here jointly with its twin brother, *exchanges*, by ſome *Italians from Lombardy*, who at the ſame time came to ſettle at *Antwerp*, and among us; and this being prior to the building the *Royal-Exchange*, they uſed to meet in the place where *Lombard-ſtreet* now is, at a houſe they had, called the *Pawn-houſe* or *Lombard*, for tranſacting buſineſs; and as they were then the ſole negociators in inſurances, in all policies of inſurance to this day, a clauſe is inſerted, in the following words:—"This writing or policy of inſurance, ſhall be of as much force and effect, as any writing heretofore made in *Lombard-ſtreet*:" which is a ſtrong confirmation of the general opinion, that we are indebted for the introduction of this great commercial benefit into *England*, to the ingenious and active people above-mentioned. * Lib. 25. C. 18.

And as inſurances in time grew more general in *England*, and ſome difficulties aroſe touching the recovery of loſſes, upon actions on *aſſumpſits*; and ſo little were the judges acquainted with the nature of the contracts, that ſo late as the 30th and 31ſt of the reign of queen *Elizabeth*, it became a queſtion where an action upon a policy of inſurance ſhould be tried; the policy having been effected in *London*, and the ſhip detained in the river *Soane* in *France*. The policy was on a ſhip from *Melcome Regis* in the county of *Dorſet*, to *Abbeville* in *France*. The plaintiff declared, that the ſhip in ſailing towards *Abbeville*, *viz.* in the river *Soane*, was arreſted by the king of *France*. The parties came to iſſue upon the queſtion, whether the ſhip was ſo arreſted or not; and it was tried before lord chief juſtice *Wray*, in the city of *London*; and a verdict was found for the plaintiff. In arreſt of judgment it was moved, that this iſſue ariſing merely from a place out of the realm, could not be tried in *London*. But it was reſolved by the court, that this iſſue ſhould be tried where the action was in this caſe brought; for the promiſe, which is the ground and foundation of the action, was made in *London*; and the arreſt now in iſſue, is not the ground of the action, which is founded on the *aſſumpſit*, and the arreſt is the breach of the *aſſumpſit*. "This," ſays Mr. *Park*, "is the moſt ancient caſe I have been able to find upon the ſubject of inſurances." Subſequent perplexities having ariſen in the courts of judicature, the attention of the legiſlature to this national object was awakened, and it was found neceſſary to paſs an act of parliament, in which the principles of this ſpecies of contract are clearly defined, and made the baſis of that legal protection and encouragement of the practice, which was become eſſential to the extenſion and proſperity of commerce. 6 *Coke's* Rep. 47. b.

The purpoſe of this ſtatute was, to erect a particular court for the trial of cauſes relative to policies of inſurance, in a ſummary way; and to that end it ordained, that a commiſſion ſhould iſſue yearly, directed to the judge of the admiralty, the recorder of *London*, two doctors of the civil law, two common lawyers, and eight merchants, impowering any five of them to hear and determine all ſuch cauſes, ariſing in *London*; and it alſo gave an appeal from their deciſion, by way of bill, to the court of Chancery. 43 *Eliz.* C. 12.

And in purſuance thereof, an office was erected and kept on the Weſt ſide of the *Royal-Exchange*; but this act did not exclude others from making inſurances, in whoſe policies

licies was inſerted, *that they ſhould be of as much force as thoſe heretofore made in* Lombard-ſtreet, *at the* Royal-Exchange, *or any where elſe*. But there being ſome defect in the aforeſaid act, touching the power of the commiſſioners, which was limited to *London*, its continuance was not of long duration.

And by a new act of parliament the court was revived, and larger powers were given to the commiſſioners for carrying it into execution; ſo that, in conſequence of this laſt act, inſurances multiplied, and all diſputes concerning them were determined by the commiſſioners; but as private perſons were not excluded thereby from carrying on this buſineſs as before, and the commiſſioners taking no cognizance of any policies not made in their office, whilſt the recovery of loſſes thereon were made eaſy at *common law*; and ſome partiality having been practiſed by the commiſſioners, and an appeal being allowed from their determinations to the court of chancery, the buſineſs of this court fell off, and the granting commiſſions was diſcontinued. 13 and 14 *Car.* II. C. 23. 9 *Ann.* C. 6.

After this, no law was made in *England* concerning inſurances, except one to prohibit inſuring on marriages, births, chriſtenings, and ſervice; but all was tranſacted by private office-keepers, till an act was paſſed in the year 1720, by which his majeſty was enabled to grant two charters, for erecting two corporations for inſuring ſhips and merchandize, and lending money on bottomry, which are now called the *Royal-Exchange aſſurance*, and the *London aſſurance*; which corporations are to have perpetual ſucceſſion, ſubject to redemption, or power of revocation, as is here under mentioned; the corporation to have liberty to chuſe their governors, directors, officers, and ſervants, as ſhould be preſcribed in the charters: The governors and directors to continue for three years; to have a ſeal, and be capable to purchaſe land not exceeding 1000l. *per Ann.* and may ſue and be ſued in their corporate capacity. 6 *Geo.* I. C. 18.

Each corporation to pay into the Exchequer 300,000l. towards diſcharging the debts of the civil government.

Each to raiſe ſuch ſums as his majeſty ſhould direct, not exceeding 1,500,000l. for paying the 600,000l. and to enable them to pay loſſes, and lend money on bottomry and government ſecurities, which money is to be raiſed at general courts, by taking ſubſcriptions, or by calls, or otherwiſe, as the general courts ſhall think fit or expedient, and ſtock liable to calls may be ſold for that purpoſe; and proprietors refuſing calls to pay 8 *per cent.* intereſt; may take up money to advance on parliamentary ſecurities; ſtock transferable and deviſable; a perſonal eſtate not to be taxed; governors, directors, &c. may be members of parliament, but not to be bankrupts on account of ſuch ſtock; to have power to make by-laws, as by charters; no other corporation or partnerſhip to inſure ſhips, or lend money on bottomry, on penalty of forfeiting the money aſſured, and the policy to be void; and in caſe of bottomry, the ſecurity to be void, and the contract to be uſurious. None to be governors, &c. or to have ſtock in both corporations. The parliament, at any time within thirty-one years from the date of the charters, upon three years notice in the *London Gazette*, fixed up on the *Royal-Exchange*, and payment of 300,000l. to each corporation, may then, and not till then, void the ſaid corporations. If, after thirty-one years, the king ſhall adjudge the continuance of the ſaid corporation to be hurtful, or inconvenient to the publick, he may by letters patent void the ſame, without any inquiſition, or *ſcire facias*, in which caſes the like power ſhall never be grantable again. Ditto.

The *South-Sea* and *Eaſt-India* companies may advance money on bottomry to their captains, &c.

The ſaid two corporations, having each paid into the *Exchequer* 111,250l. in part of the 300,000l. and having covenanted to pay 38,750l. further part thereof in three months, the reſidue of the ſums amounting together to 300,000l. ſhall be releaſed. 7 *Geo.* I. C. 17. S. 26.

Some acts have ſince paſſed to regulate certain proceedings at law, where the corporations were parties, giving them power to plead generally. And theſe are all the acts relating to inſurances in *England* till the following, made for the better regulation thereof, and to prohibit them on *French* effects, *viz.* 8 *Geo.* I. C. 15. 11 *Geo.* I C. 30.

The preamble obſerves, that the making aſſurances, intereſt or no intereſt, or without further proof of intereſt than the policy, hath been productive of many pernicious practices,

tices, whereby great numbers of ſhips, with their cargoes, have either been fraudulently loſt and deſtroyed, or taken by the enemy in time of war; and ſuch aſſurances have encouraged the exportation of wool, and the carrying on many other prohibited and clandeſtine trades, which by means of ſuch aſſurances have been concealed, and the parties concerned ſecured from loſs, as well to the diminution of the publick revenue as to the great detriment of fair traders; and by introducing a miſchievous kind of gaming, or wagering, under the pretence of aſſuring the riſque on ſhipping and fair trade, the inſtitution and laudable deſign of making aſſurances hath been perverted; and that which was intended for the encouragement of trade and navigation, has, in many inſtances, become hurtful and deſtructive of the ſame. For remedy whereof, *It is enacted*, that, after the 1ſt day of *Auguſt* 1746, no aſſurance ſhall be made by any perſon or perſons, bodies corporate or politick, on veſſels belonging to his majeſty or his ſubjects, or on any goods, merchandizes, or effects on board the ſame, intereſt or no intereſt, or without further proof of intereſt than the policy, or by way of gaming or wagering, or without benefit of ſalvage to the aſſurer, and that every ſuch aſſurance ſhall be null and void to all intents and purpoſes. 19 *Geo.* II. P. 567, 568.

Aſſurance on private ſhips of war, fitted out by his majeſty's ſubjects ſolely to cruize againſt his enemies, may be made by or for the owners, intereſt or no intereſt, free of average, and without benefit of ſalvage to the aſſurer.

Merchandizes or effects from any parts in *Europe* or *America*, in the poſſeſſion of the crowns of *Spain* or *Portugal*, may be aſſured in ſuch way and manner as if this act had not been made.

After the ſaid 1ſt of *Auguſt*, all money to be lent on bottomry, or at *reſpondentia*, upon ſhips belonging to his majeſty's ſubjects, bound to or from the *Eaſt-Indies*, ſhall be lent only on the ſhip, &c.

In all actions, &c. brought after the ſaid 1ſt of *Auguſt*, by aſſured, upon any policy of aſſurance, the plaintiff, or attorney, &c. within fifteen days after he ſhall be required ſo to do in writing by the defendant, &c. ſhall declare in writing the ſums he hath aſſured, &c. in the whole, and what ſums he hath borrowed at *reſpondentia*, or bottomry, for the voyage, or any part of the voyage, in queſtion.

After the ſaid 1ſt of *Auguſt*, any perſon, &c. ſued in an action of debt, or covenant, &c. on policy of aſſurance, may bring the money into court; and if the plaintiff ſhall refuſe to receive the ſame, with coſts to be taxed in full diſcharge of ſuch action, and ſhall afterwards proceed to trial, and the jury ſhall not aſſeſs him damages exceeding the ſum ſo brought, the plaintiff, on every ſuch action, ſhall pay to the defendant coſts, to be taxed.

This act ſhall not extend to, or be in force againſt, perſons reſiding in any part of *Europe*, out of his majeſty's dominions, for whoſe account aſſurance ſhall be made before the 29th of *September*, 1746; nor againſt perſons reſiding in any parts of *Turkey*, *Aſia*, *Africa*, or *America*, for whom aſſurances ſhall be made before the 29th of *March*, 1747.

Inſurance on ſhips or goods appertaining to the crown and ſubjects of *France*, or lending them money on bottomry, is prohibited by this act; though, as it was only temporary, and its duration limited to that of the then war, it expired, and became void. 21 *Geo.* II. P. 75, 76, 77, and 78.

This branch of buſineſs at firſt was confined to maritime affairs ſolely, though at preſent it is extended to the inſuring not only ſhipping and merchandizes, but alſo houſes, furniture, lives, liberties, &c. according to the different agreements for that purpoſe. Theſe contracts are called policies, from the *Spaniſh* word *Polica*, and that originally from the latin *Pollicitatio*, or promiſe, and are now made either at the publick or private offices. Of the former, we have only the two before-mentioned in *England* eſtabliſhed by charters; though of the private ones, we have many in this city, and of late years in ſome others, as *Briſtol*, *Exeter*, *Liverpool*, *Hull*, *Newcaſtle*, and *Glaſgow*, where great buſineſs is tranſacted, and I believe on as fair a footing as in any part of the world; though policies having been filled up in ſuch various terms, and ſuch unprecedented expreſſions inſerted, according to the different conceptions, fancies, or exigencies of the inſured, it has naturally occaſioned many diſputes, and conſequently brought on many remarkable trials, and wiſe deciſions of the utmoſt importance to the mercantile world; for which reaſon

all

all the modern caſes are added in this edition to the more remote, and claſſed under ſeveral diſtinct heads, that they may be more readily referred to, when ſimilar caſes ſhall induce merchants and lawyers to ſearch for precedents, to determine their own line of conduct, &c. I ſhall alſo take occaſion to mention the method and obligation of inſurances made in *France* and *Holland*, in order to give full ſatisfaction on this head, and render my book as complete as poſſible.

ASSURANCES, as I have before obſerved, are of various kinds, both in regard of the marine and terrene property; of the firſt, ſome being on ſhips, or parts of ſhips only; others on merchandize ſingly; and others on ſhips and goods jointly; and theſe are again branched out to run either by the month, or for a time ſtipulated, or to one ſingle port, or out and home, with liberty to touch at the different places mentioned in the policy, or for a trading voyage.

Although policies of aſſurance are not to be ranked with ſpecialty contracts, not being under ſeal, yet they have always been held as ſacred agreements, and of the firſt credit; ſo much ſo, that, when once they are underwritten, they can never be altered by any authority whatever, becauſe it would open a door to an infinite variety of frauds, and introduce uncertainty into a ſpecies of contract, of which certainty and preciſion are the moſt eſſential requiſites. *Skin.* 54.

In a caſe before lord chancellor *Hardwicke*, this doctrine was admitted in its full extent. The plaintiff had inſured a ſhip at and from *London* to *Oſtend*, from thence to *Rotterdam*, and from thence to the *Canaries*, warranted an *Oſtend* ſhip, which ſhip was afterwards taken. The bill was brought to have the policy rectified, for that the intention of the parties was miſtaken therein; which was, that the warranty was too general; and that the voyage ſhould have been ſtated to take place from *Oſtend* only, and not from *London*. His lordſhip, as there was no evidence to vary the contract from the written words, ordered the bill to be diſmiſſed. *Hinckle* v. the Royal-Exch. Aſſurance Comp. 1 *Ves.* 317.

But there are ſome exceptions to the foregoing general rule. For inſtance, after ſigning, policies are frequently altered by conſent of the parties; and ſuch policies are good, agreeably to the maxim *Conſenſus tollit errorem.*

Enumeration of Cauſes which make Policies null and void.

THOSE made on houſes, lives, or liberties, muſt be paid according to the tenour of the agreement, in the full ſum aſſured, as theſe ſort of policies admit of no average; and for the firſt, often with their furniture, againſt fire, ſeveral offices are erected in *London*, with the limitation to this branch only.

Aſſurances may likewiſe be made on goods ſent by land, or by hoys, &c. on rivers; and this is often done, more eſpecially on jewels, &c.

They may likewiſe be made on ſhips and goods, *loſt or not loſt*, which is commonly done when a ſhip hath been long miſſing; and theſe words being inſerted in the policy, oblige the underwriters to pay, although the ſhip was loſt at the time of making ſuch inſurance, except the aſſured ſaw the ſhip wrecked, or had then certain knowledge of her being ſo; in which caſe the ſubſcription ſhall not oblige, as this is accounted a mere fraud.

So likewiſe, if the aſſured ſhall, on a rotten veſſel, get inſured more than ſhe is worth, with the villainous deſign to deſtroy her, and ſhall afterwards give directions to have his

his roguiſh intentions put in execution, this fraudulent act will not oblige the inſurers, but expoſe the perpetrators of it to condign puniſhment for their knavery.

It ſhall not be lawful, from and after the paſſing of this act, for any perſon or perſons to make or effect, or cauſe to be made or effected, any policy of aſſurance on any ſhip or veſſel, or upon any goods, merchandizes, or effects, or property whatever, without firſt inſerting, or cauſing to be inſerted, in ſuch policy, the name or names, or the uſual ſtile and firm of dealing, of one or more of the perſons intereſted in ſuch aſſurance; or without, inſtead thereof, firſt inſerting the name or names, or the uſual ſtile and firm of dealing, of the conſignor or conſignors, conſignee or conſignees, of the goods or property ſo to be inſured; or the name or names, or the uſual ſtile and firm of dealing, of the perſon or perſons reſiding in *Great-Britain*, who ſhall receive the order for and effect ſuch policy, or of the perſon or perſons who ſhall give the order or directions, the agent or agents immediately employed to negociate or effect ſuch policy. The ſtatute further declares, that every policy made or underwrote, contrary to the true intent and meaning of this act, ſhall be null and void to all intents and purpoſes. 28 *Geo.* III. Ch. 56.

If a ſhip be inſured from the port of *London* to *Cadiz*, and before ſhe breaks ground is burnt, inſurers not liable; but if the words are, *at or from the port of London*, they are liable in ſuch caſe. *Molloy*, P. 292. S. 9.

An inſurance from *London* to void for uncertainty, though private inſtructions for the port; yet the blank in the policy will not bind the inſurer, policies being now generally made free of average, and without benefit of ſalvage, many diſputes on theſe heads are avoided. Ditto, P. 295. S. 14.

An inſurance made on prohibited goods not binding, unleſs they were prohibited after the inſurance made; as on wool, leather, &c. for ſuch inſurances would tend to deſtroy commerce, which is directly to thwart the true intention of all policies. Ditto, P. 296. S. 15.

Perſons who, by way of inſurance or otherwiſe, ſhall undertake or agree that any ſheep, wool, or any other of the enumerated articles in the ſtatute, ſhall be carried or conveyed to any parts beyond the ſeas, from any port or place whatſoever within this kingdom, or, in purſuance of ſuch undertaking or agreement, ſhall deliver, or cauſe or procure to be delivered, any ſheep, wool, &c. in parts beyond the ſeas, ſuch perſon or perſons, their aiders and abetters, ſhall, upon conviction, be liable to the ſame puniſhments as the exporters. The like penalty follows, upon the perſon or perſons paying any premium for ſuch inſurances, Sect. 48. All policies of inſurance which ſhall be made on goods and merchandize, laden or to be laden on any ſhip or veſſel bound from *Great-Britain* to foreign parts, which ſhall afterwards appear to be wool, woollen or worſted yarn, &c. ſhall be deemed and taken to be null and void, notwithſtanding any words or agreement whatſoever which ſhall be inſerted in ſuch policy of inſurance; and nothing ſhall be recovered by the aſſured from the inſurer for loſs or damage, or for the *Premium* which ſhall have been given for ſuch inſurance. This clauſe liberates the underwriters in caſes, which frequently happen, of inſuring merchandize on board, without ſpecifying to them the ſpecies of commodity inſured. 28 *Geo.* III. C. 38.

Under the head of *prohibited goods* muſt be comprehended all commodities prohibited to be exported or imported by poſitive ſtatutes, or by the king's proclamation, *in time of war*; or which from the nature of the commodity, and by the law of nations muſt neceſſarily be contraband; and the policies inſuring any ſuch are abſolutely null and void.

Where the words of the policy are, *the ſhip warranted to depart with convoy*, it ſhall be intended ſhe ſhall keep with convoy during the voyage, if poſſible; and if ſhe depart wilfully from the convoy, it is a fraud; but if having departed with convoy, by ſtreſs of weather ſhe loſes the convoy, and is taken, inſurers are liable. *Jefferies* v. *Legendra*, *Carth.* 216; 3 *Lev.* 320; 1 *Show.* 323; 2 *Salk.* 443.

If there be thieves on ſhipboard among themſelves, the maſter of the ſhip is to anſwer for that, and not the inſurer; though the words of the policy inſure againſt loſſes by thieves, yet they are to be conſtrued to mean aſſailing thieves. *Lex Mercator.* 151.

Suppreſſio veri aut Allegatio falſi is ſufficient to diſcharge the policy: It is a general rule, that the inſured ſhall inform the inſurer of all material circumſtances which have come to his knowledge or information, at the time of making the policy, in order that the con-

contract may be fairly adjuſted; which being a contract upon chance, cannot be valid, if one party knows more than the other: Equality in contracts, by the law-merchant, is eſſential. Therefore, all miſrepreſentation whatever, though it happened by miſtake, if in a material point, will affect the policy, and render it null as much as actual fraud. A deciſion was given, which confirms this propoſition, in the following caſe. *Seamen* v. *Fonnereau*, before L. C. J. *Lee*, at *Guildhall*, after *Trin.* Term, 1742, and verdict by a ſpecial jury for defendant.

This was an action on a policy of inſurance on the ſhip *Mary* and *Hannah*, from *New-York* to *Philadelphia*. At the time when the inſurance was made, which was in *London* on the 30th of *January*, the broker repreſented the ſituation of the ſhip to the underwriter, *Fraſer*, as follows: "The *Mary* and *Hannah*, a tight veſſel, ſailed with ſeveral armed ſhips, and was ſeen ſafe in the *Delaware* on the 11th of *December*, by a ſhip which arrived at *New-York*." In fact, the ſhip was loſt on the 9th of *December*, by running againſt a *Cheveau de Friſe* placed acroſs the river. The cauſe came on to be tried before Lord *Mansfield* at *Guildhall*. The defence was founded on the miſrepreſentation as to the time when the ſhip was ſeen; and the repreſentation and the day of the loſs being proved, the jury found for the defendant. A rule was obtained to ſhew cauſe why a new trial ſhould not be had; and, after arguments at the bar, Lord *Mansfield* ſaid, "There was no evidence of actual fraud in the preſent caſe, and no queſtion of that ſort ſeemed to be made. But there was a poſitive averment that the ſhip was ſeen in the *Delaware* on the 11th of *December*. The underwriter was deceived as to that fact, and entered into the contract under that deception. In inſurances upon ſhips at a great diſtance, *their being ſafe up to a certain day* is always conſidered as a very important circumſtance. I am of opinion, that the repreſentation concerning the day was very material." The other judges delivering the ſame opinion nearly in the ſame words, except adding, "That the ſafety of the ſhip is the moſt material fact of any, in caſes of inſurance," the court diſcharged the rule for a new trial, and the verdict of the jury which had voided the policy was confirmed. And it was further ratified by the Houſe of Lords, on the 8th of *April*, 1785, in the caſe of *Stewart* and others, againſt *Dunlop* and others; briefly this: The clerk of the plaintiff made inſurance, by his maſter's orders, on a ſhip which the clerk knew to be taken by the enemy, from a converſation he had with the maſter of a ſhip arrived at *Greenock*; and though it appeared in evidence, that the plaintiff knew nothing of the converſation, nor conſequently of the loſs of the *Peggy*, at the time he inſured her, yet the lords of ſeſſion in *Scotland* decreed, That the inſurance made by the plaintiff would not have been made, if the Brigantine *Henrietta* had not arrived in the road of *Greenock* the day preceding, and brought intelligence that the ſhip *Peggy* was taken, and, therefore, that the policy was void. On the appeal from this decree, the Houſe of Lords affirmed the decree. And this is the ſtrongeſt caſe, with reſpect to miſrepreſentation without fraud, that could well happen; for here the maſter ſuffered for the concealment of a material circumſtance by his clerk, who was conſidered as his agent; and who, unknown to him, had been enjoined ſecrecy by the perſon who informed him the *Peggy* was captured. Let this, then, be conſidered as a general admonition, inſerted here expreſsly to point out the great care and attention that ought to be given by owners and maſters of ſhips, when inſuring them, to give a true and exact repreſentation of every material circumſtance reſpecting them, and to inſtruct their agents or clerks to do the ſame. *Macdowal* v. *Fraſer*. See *Park's* Syſtem of the Law of Marine Inſurances.

A perſon having received a letter that his ſhip ſailed from *Carolina*, in company with another ſhip, and that the other ſhip loſt ſight of this ſhip in the night; that the captain informed the perſon who wrote the letter, that ſhe was leaky in ſuch a latitude; and that, after they loſt ſight of the ſhip, there had been a hard gale for twenty-four hours: After this letter received by the merchant's agent, he made inſurance without producing it. The ſhip was afterwards taken near the Land's End by a *Spaniſh* privateer, and carried into *St. Sebaſtian's*. This, though the ſhip was not loſt by the leak or the ſtorm, was adjudged ſufficient to avoid the policy; becauſe if the inſurer had known what the inſured did, at the time of making the inſurance, he would not have done it, or at leaſt not on the ſame terms.

The foregoing caſes may properly be conſidered as doubtful with reſpect to intentional fraud, and may paſs under the denomination of *deceptions*; but while the ſums that are recoverable

recoverable on policies of insurance are of such amount, as to tempt sharpers and rogues by profession, to cheat honest and respectable merchants, it becomes our duty to lay before them some cases of absolute *fraud* of late date; that underwriters may be put upon their guard, and carefully examine every document and evidence upon the subject of losses, before they pay the sums they have respectively underwritten; and they should keep up a good understanding and harmony with each other.

This was an action brought for the recovery of a total loss, on a policy of insurance made on goods and merchandize on board the *Bona Fortuna*, at and from *North Bergen* to any ports or places whatsoever, until her safe arrival in *London*. It was underwritten thus:—"Warranted neutral ship and property." The cause was tried before *Lord Mansfield* at *Guildhall*, when it was admitted that the plantiff had goods on board to the amount of the sum insured; and it appeared that the ship on her voyage was by the force of winds and stormy weather, wrecked, cast away, and sunk in the seas, whereby the said goods and merchandize were totally lost. But it was likewise proved, that the ship or vessel the *Bona Fortuna*, and the property on board, at and before the time she was lost, were not *neutral* property, as warranted by the said policy. *Lord Mansfield* and the rest of the court, were of opinion, that it was too clear a case to bear an argument. This was *no contract*; for there was a falsehood in *the warranty*, in respect to the condition of the things insured; the plaintiff insured neutral property, and this was not neutral property. *Woolmar* v. *Muilman*. 1 *Blackstone's* Rep. 427.

A short time after the decision of *Woolmar* against *Muilman*, another cause similar to it, was tried before the same learned judge. The insurance had been made on goods on board a ship *warranted* Portuguese; and it was made during the *French* war, when the premium would have been much higher on an *English* ship. The plaintiff gave partial evidence of her being *Portuguese*; and that she was obliged, on account of perils of the sea, to put into a *French* port, by which the cargo was spoiled. This was admitted by the defendant, but he contended that during her stay at the *French* port, she was libelled, and condemned as not being *Portuguese*; and that although the goods were lost by a different peril, yet, in fact, the ship was not *Portuguese*, though insured as such, and that this vitiated the policy *ab initio*. Verdict for the defendant, the underwriter. *Fernandes* v. *Da Costa*. Sittings after *Hil.* 4 *Geo.* III.

This was an action to recover on a policy of assurance on goods on board the *Matty and Betty*, at and from the coast of *Africa* to her last discharging port in the *British West-Indies*. The objection made to paying the loss was, that there had been a material concealment, or misrepresentation of the true state or situation of the ship and voyage at the time of underwriting the policy. The ship had been sent out to trade on the coast of *Africa*, with directions to proceed from thence to the *British West-Indies*, and to stop at *Barbadoes*, if she could get *a sale*; if not, to proceed to *Montego-Bay*. On the 2d of *October* she sailed from *St. Thomas's* on the coast of *Africa*, with a cargo of slaves, and was taken on the 6th of *December* following by an *American* privateer. A letter was received by a house at *Liverpool* on the 21st of *February* following, mentioning that the ship was well, and had sailed from *St. Thomas's* on the 2d of *October*. This information was communicated next day to the plaintiffs, who wrote the same evening to two different brokers, to get a *new* insurance on the ship, (there having been one before) and another on the cargo, which last was the subject of the present action. In the instructions to the brokers, the plaintiffs say nothing of the ship from the time of her first sailing; but to one of the brokers, they wrote thus: "We should be glad, if you would get us 600*l.* more on the ship, as she is *rather long*; and we think it not prudent to run so large a risk at so critical a time. We expect to hear soon of her." It had afterwards occurred, that the policy might be effected, if intimation was not given of the letter which had been received. The broker, therefore, by direction of the plaintiffs, added to the instructions; "the above ship was on the coast the 2d of *October*," but said nothing of her having sailed from *St. Thomas's*. The policy was dated the 21st of *March*. *Ratcliffe*, and another, *v. Shoolbred*. Sittings after *Trin.* 1780.

Lord *Mansfield* said, the insured is bound to represent to the underwriter all the material circumstances of the ship and voyage, if he do not, though by accident only, or neglect, the underwriters are not liable—*à fortiori*, that is with much stronger reason, if he suppress or misrepresent from *fraud*. The question is, whether this be one of those cases which is affected by misrepresentation or concealment. If the plaintiffs concealed

any material part of the information they received, it is a *fraud*, and the inſurers are not liable. The jury found for the defendant, agreeably to his lordſhip's direction.

The policy, in this caſe, was on the brig *Richard*, at and from *Plymouth* to *Briſtol*. Several letters paſſed between the plantiff and the broker, who effected the policy, as to the premium at which the inſurance could be obtained: At laſt, it was underwritten at four guineas *per cent*. The broker's inſtructions ſtated, *the ſhip ready to ſail* on the 24th of *December*. The broker repreſented to the underwriter, that the ſhip was in port, when, in fact, ſhe had ſailed the 23d of *December*. *Fillis* v. *Breton*; Sittings after *Hil.* 1782.

Lord *Manſfield* ſaid, this was a material concealment and miſrepreſentation; the jury, however, heſitated: His lordſhip then laid down the following as general principles.—In all inſurances it is eſſential to the contract, that the aſſured ſhould repreſent the true ſtate of the ſhip, to the beſt of his knowledge; on that information, the underwriter engage. If he ſtates that as a fact, which he does not know to be true, but only believes it, it is the ſame as a *warranty*. He is bound to tell the underwriters the truth. In the preſent inſtance, the only material point is this: Had the ſhip ſailed, or was ſhe in port? Upon this, the jury found for the underwriter.

But, before we take leave of this important ſubject, it is eſſential to notice, that there are exceptions to the general rule againſt concealment, which the inſured ſhould be apprized of. *Aliud eſt celare, aliud tacere*: There are many matters, as to which the *inſured* may be innocently ſilent. *Firſt*, as to what the inſurer knows, however he came by that knowledge. *Secondly*, as to what he ought to know. *Thirdly*, as to what leſſens the riſque. An underwriter, for inſtance, is bound to know political perils, as to the ſtate of war and peace. If he inſures a privateer, he needs not be told her deſtination. And as men reaſon differently from the ſame facts, he needs not be told another's concluſions from known facts. See *Park's Syſtem of the Law of Marine Inſurance*, p. 183, where theſe exceptions are ſtated from *Blackſtone's Reports*.

DEVIATION is underſtood to mean a voluntary departure, without neceſſity, or any reaſonable cauſe, from the regular and uſual courſe of the ſpecific voyage inſured.

This cauſe was tried before Mr. juſtice *Yates*. The plaintiff inſured goods in a veſſel bound from *Dartmouth* to *Liverpool*: The ſhip ſailed from *Dartmouth*, and put into *Loo*; a place ſhe muſt of neceſſity paſs by, in the courſe of the inſured voyage. But as ſhe had no liberty given her by the policy to go into *Loo*; although no accident befel her in going into or coming out of *Loo*, for ſhe was loſt after ſhe got out to ſea again, yet the judge held this to be a deviation without neceſſity; and a verdict was accordingly found for the underwriter. *Fox* v. *Black*; *Exeter* Aſſizes.

The action was brought to recover upon a policy on goods, and other merchandize, laden on board the ſhip called the *Charming Nancy*, from *Dunkirk* to *Leghorn*. The ſhip came to *Dover*, to procure a *Mediterranean paſs*, and was afterwards loſt. Lord *Manſfield* was of opinion, that the calling at *Dover* was a deviation, voiding the policy; and the plaintiff was nonſuited. This appears to be a hard caſe, as the deviation was for the benefit of the inſurer, in protecting his property from pirates by the *Mediterranean paſs*. It muſt have turned upon expreſs words in the policy. *Townſon* v. *Guyon*.

If the maſter of a veſſel put into a port not uſual, or ſtay an unuſual time, it is a *deviation*; and if the deviation be but for a ſingle night, or an hour, it is fatal. *Park*, p. 295, 298.

The ſhip *George* was bound from *Cork* to *Jamaica*, with a convoy, in the courſe of a war: The captain, in concert with two other veſſels, took advantage of the night, and, being ſhips of force, cruiſed, and thereby deviated out of the direct courſe of their voyage, in hopes of meeting with a prize. *Cock* v. *Townſon*.

Lord *Camden*, then chief juſtice of the *Common Pleas*, before whom the cauſe was tried, clearly held, and a ſpecial jury of merchants, agreeably to his directions, determined, that from the moment the *George* deſerted, or deviated from the direct voyage to *Jamaica*, the policy was diſcharged.

In a modern caſe, however, it ſeemed to be the general opinion of lord *Manſfield* and a ſpecial jury, that if a merchant-ſhip carry *Letters of Marque* ſhe may *chaſe* an enemy, though ſhe may not *cruiſe*, without being guilty of a deviation.

On an inſurance of the *Mary*, at and from *London* to *Cork* and the *Weſt-Indies*, the queſtion was, whether a ſhip, having Letters of Marque, could chaſe an enemy's ſhip with-

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out being ſaid to have deviated. The facts were, that in the night the *Mary* had deſcried a *Spaniſh* ſail; and, after chaſing, loſt ſight of her for ſix hours, till the morning, when they engaged. The *Mary* did not make a prize of the *Spaniſh* ſhip; but proceeded on her voyage, and was afterwards captured. It was agreed on all hands, that a ſhip in ſuch circumſtances might not cruiſe; but ſeveral witneſſes ſpoke to the uſage and practice of ſhips, which carried Letters of Marque, *chaſing* an enemy. It was admitted, on the part of the inſurers, that, if an enemy came in the way, the ſhip muſt defend or engage; but contended, that, if the Letter of Marque loſt ſight of the enemy, it was no longer *chaſing* but cruiſing. Lord *Mansfield* left it, upon the evidence, to the jury, who found for the plantiff, thereby deciding the queſtion in the affirmative. *Jolly* v. *Walker*; *Eaſt.* 1781.

Deviation diſcharges a policy from that time only; therefore damage happening before a deviation, may be recovered, notwithſtanding there be afterwards a deviation. 2 *Salk.* 444 *Green* v. *Young*; Lord *Raymond*, 840.

In caſe of deviation, the inſurers are not bound to return the premium, becauſe they have begun to run a riſque.

But though the conſequences of a voluntary deviation are thus fatal to the validity of the contract of inſurance, yet, whenever the deviation ariſes from neceſſity and a juſt cauſe, the underwriters remain liable. The neceſſities and cauſes, moſt generally known and admitted, we ſhall briefly ſtate; and only obſerve, that their validity has been determined in a variety of caſes, in our courts of judicature.

The firſt ground of neceſſity that juſtifies a deviation is going into port to repair.

The next excuſe for quitting the direct courſe is, ſtreſs of weather. Upon this ſubject one leading principle runs through all the caſes—that whatever happens by the act of God, ſhall not be imputed to man. Beſides, it ſhould ſeem that great latitude ought to be given, in the conſtruction of the law, to deviations which have for their object the preſervation of ſhip and cargo for the benefit of the underwriters, who, if there had been no deviation on account of ſtreſs of weather, might have ſuffered by a partial or total loſs.

A deviation may alſo be juſtified to avoid an enemy, or ſeek for convoy; becauſe, upon the principle juſt advanced, it ought not to be deemed a guilty deviation to go out of the courſe of the voyage to avoid danger, or to obtain a protection againſt it. Many other circumſtances may occur, which will have preciſely the ſame conſequences: For, wherever the maſter of a ſhip does that which is for the general benefit of all parties, the act is as much within the intention and ſpirit of the policy, and conſequently as much protected by it, as if expreſſed in words.

If any of the circumſtances above ſtated do really and *bona fide* happen, ſo as to render a deviation abſolutely neceſſary, the ſhip muſt purſue ſuch *voyage of neceſſity* in the direct courſe, and in the ſhorteſt time poſſible, otherwiſe the underwriters will be diſcharged; becauſe a voyage ſuper-added by neceſſity, ought to be ſubject to the ſame qualifications, and entitled only to the ſame ſort of latitude, as the original voyage, it having become by operation of law a part, as it were, of that original voyage. *Park.*

A ſhip in her voyage was ſeized by the government, and turned into a fire-ſhip; the queſtion was, whether the inſurers were liable. *Holt* thought it was within the word *detention*; but the cauſe was referred.

Where the policy is againſt reſtraint of princes, that extends not where the inſured ſhall navigate againſt the law of nations, or where there ſhall be a ſeizure for not paying of cuſtoms, or the like. 2 *Salk.* 444. Ld. *Raymond* 840. ſuppoſes inſurers liable.

If a man pays money on a policy of inſurance, ſuppoſing a loſs where there was none, this ſhall be money received to the uſe of the inſurer, for which he may maintain an action. 2 *Vern.* 176. *Skinner* 411. 1 *Show.* 156. S. P.

Per *Holt*, *niſi prius*, the captain of a ſhip may be changed, without notice to the inſurers; eſpecially as our preſent policies always contain the words, *or whoſoever elſe ſhall be for maſter in the ſaid ſhip.* 12 Mod. 325.

Goods inſured by agreement, valued at 600*l.* and the inſured not to be obliged to prove any intereſt, yet the inſured was ordered to diſcover what goods he put on board, that the value of his goods ſaved may be deducted out of the 600*l.* 2 *Vern.* 716 *Lavyre* v. *Farr.*

The policy ran, *till the ſhip ſhould have ended and be diſcharged of her voyage.* Arrival at the port is not a diſcharge till ſhe is unladen. *Skin.* 243.

If goods be inſured as the goods of an ally, when they are the goods of an enemy, it is a fraud, and the inſurance not good. Ditto, 327.

Inſurance from *London* to the *Eaſt Indies*, warranted to depart with convoy, declaration ſets forth, that the ſhip went from *London* to the *Downs*, and from thence with convoy, which the court held to be ſufficient; *contrà Holt.* 2 *Salk.* 243. *Lethiullier's* caſe.

Damages happening to periſhable goods from their own nature, not to be borne by the aſſurer.

One having no intereſt in a ſhip, lent 300l. on a bottomry bond, and inſured 450l. on the ſhip; the bond was recovered, but the policy decreed to be delivered up. 2 *Vern.* 269. *Goddard* v. *Garrett.*

And formerly, if one had no intereſt, though the policy ran, *intereſt or no intereſt*, the inſurance was void; and the reaſon was, becauſe inſurances were made for the benefit of trade, and not that perſons unconcerned therein, or unintereſted in the ſhip, ſhould profit by it; and in this caſe, if the ſhip ſurvived the time limited in the bottomry bond, and was loſt within the time limited in the policy, if inſurance good, the defendant might be intitled to money on the bond, and policy alſo; but ſince this, inſurances have been conſtantly adjudged good, on *intereſt or no intereſt*, till the afore-mentioned act of 19 *Geo.* II. cap. 37, prohibited it. 13 Mod 77, 80.

One lends 250l. on a bottomry bond, and afterwards inſures on the ſame ſhip, the ſhip is loſt, he ſhall have both the benefit of the inſurance and the bond too. 2 *Vern.* 717. *Harman* v. *Vanhatton.*

On a ſpecial verdict it was found, that the ſhip was loſt *per fraudem & negligentiam magiſtri.* and fraud was held to be barratry, though mere negligence might not. 8 Mod. 230. *Knight* v. *Cambridge.*

Inſurance, intereſt or no intereſt, the ſhip was taken by the enemy, and kept for nine days; but before it was carried *infrà præſidia, viz.* a place of ſafety, it was retaken by an *Engliſh* man of war. And whether ſuch taking was ſuch a loſs as would entitle the aſſurer to recover, was the *queſtion:* and the court ſeemed to be of opinion for the defendant. 10 *Mod.* 77. *Aſſievedro* v. *Cambridge.* If a ſhip be taken by a privateer, and not brought *infrà præſidia* of the king, whoſe ſubject took it, it is no lawful prize, and the property is not altered.

Firſt, becauſe they would be never more favourable to an inſurer *non bonâ fide*, or a wagerer, than to one that inſures *bonâ fide*; for they held, that an inſurer, having intereſt, could not recover; the property not being altered by the taking. But no judgment given.

A merchant having a doubtful account of his ſhip, inſures, without acquainting the inſurers what danger ſhe was in: This held to be fraudulent, and the court relieved againſt the policy.

Where it was found by a ſpecial verdict, that the inſurer had no intereſt in the ſhip, and the court was of opinion that made no difference.

A. made a policy, and declared under his hand, on the back, that the inſurance was made for and on account of *B.* and afterwards *A.* brought an action on the policy; and though the declaration of *B.'s* intereſt appeared at the trial, *Lee*, C. J. was of opinion, that *A.* notwithſtanding, might maintain the action; and verdict, *pro quer. De Coſta* v. *Stander*, 2 *Peer Will* 170. *Weaver* v. *Fowler.* S. P. Decreed *March* 1723.

A ſhip was taken by a *Spaniſh* privateer of *Viana*, ſo near the neutral ſhore as to make a diſpute whether a prize or not, and the ſhip was carried into the neutral port; inſiſted for the defendant, that as ſhe was not carried *infrà præſidia hoſtis*, the property was not changed, and therefore no proof of a total loſs, and verdict for plaintiff. *Aſſievedro* v. *Cambridge. Garter* v *Glover*, at *Guildhall*, 28 *June* 1744.

The Snow *Tryal*, *William Jefferys*, maſter, was taken up by the government of *Carolina*, as a Flag of Truce, to go to the *Havanna*, with pretence to bring from thence ſome *Palatines*, lately taken and carried in there on board an *Engliſh* ſhip, the *Lydia*, captain *Abercrombie*; and by this occaſion ſeveral *Carolina* merchants laded goods aboard her, to a very conſiderable value, and directed their friend, Mr *James Crockatt* of *London*, to get 10,000l. inſured on them; and at the ſame time, to inform the underwriters of every circumſtance

ſtance of the voyage; that the cargo conſiſted of eighty or ninety negroes, and the reſt manufactures of *Great-Britain* and *Germany*, all which was to be regularly cleared out for *Providence*, where the veſſel was to have liberty to call, in her way down, for a pilot: The aſſured alſo mentioned the probability, that one maſter of the *Spaniſh* language might be cloathed with the character of Captain of the Flag, by the aforeſaid government, and *Jefferys* only appear as pilot, though this latter was to ſign all bills of lading; and the ſame inſurance was ordered from the *Havanna* to *Carolina*, as was made to the *Havanna*. Mr. *Crockatt* got the 10,000*l.* inſured at four private offices, at and from *South Carolina* to the *Havanna*, and at and from thence back to *South Carolina*, with liberty to touch at *Providence*, outward and homeward bound, upon any kind of goods, laden or to be laden aboard the ſhip called the *Tryal*, a flag of truce ſhip, *William Jefferys*, maſter, beginning the adventure from, and immediately following the lading thereof aboard the ſaid ſhip at *South Carolina*, and ſo to continue until the ſaid ſhip, with the goods whatſoever, ſhall be arrived at the *Havanna*, and ſo ſhall further continue till arrived back at *South Carolina*, and the ſame there ſafely landed; and it ſhall be lawful for the ſaid ſhip, in this voyage, to ſtop and ſtay at any ports or places whatſoever, more eſpecially at *Providence*. *Richard Hill* & al. v. *Adam Spencer*, tried at *Guildhall*, by a ſpecial jury, at the ſitting after Hill. term, 1745.

At the foot of ſome of the policies are theſe words, *viz. Warranted a flag of truce for the voyage*; and in the others, after deſcribing the voyage, *the ſhip being a flag of truce for the voyage*.

The *Tryal* ſailed from *South Carolina* to the iſland of *Providence*, after the captain had received his credentials from the governor as commander of a flag of truce ſhip, where ſhe arrived, and diſpoſed of part of her cargo, and then ſailed directly towards the *Havanna*; and being arrived near the entrance of the harbour, was ſeized by a *Spaniſh* ſhip of war, and carried into the ſaid place, where her lading was condemned and ſold, and the ſhip, officers, and ſailors, detained near five months; at the expiration of which time, the governor of the *Havanna* permitted them to return, with ſome *Engliſh* that had been made priſoners, but without the *Palatines* they went to reclaim; and the governor gave the captain a protection, to ſcreen him in his return from being moleſted by men of war or privateers.

Mr. *Crockatt*, on receiving advice of the above-mentioned loſs, demanded it of the inſurers; who, thinking they had reaſon to deny the payment, ſuffered themſelves to be ſued for it; and Mr. *Crockatt*, to ſupport his demand, offered to produce the invoice, bill of lading, credential letters, and an affidavit under the ſeal of the province of *Carolina*, atteſting, that the goods contained in the *invoice* were ſhipped, and witneſſes who were ready to prove, *vivâ voce*, the capture and ſale of the goods at the *Havanna*, the detention of the mariners, and that the ſhip returned *as a flag of truce*, with forty nine *Engliſh* priſoners to *Carolina*.

On the other hand, the underwriters, to invalidate the inſurance, pretended that this was an illicit trade; that the ſhip was not a flag of truce, or, if ſhe was ſo, that the aſſured, by warranting her to be ſo, did, in effect, engage that the goods ſhould be exempt from ſeizure; that, to entitle the plaintiffs to a recovery, it was incumbent on them to ſhew the condemnation, and the reaſons of the confiſcations at the *Havanna*, and many other arguments were uſed to ſet aſide the policy; but the jury found a verdict for the *plaintiffs*.

The *Mary*, captain *Wilſon*, was hired at *London* to carry goods to *Dublin*, and an inſurance was made on ſhip and freight; but in her paſſage ſhe ran on ſhore the ſands called *Artelow Grounds*, and was there deſerted by the captain and ſailors, who went aſhore to ſave their lives, ſuppoſing the ſhip irretrievably loſt; but ſome fiſhermen, hearing of this wreck the night before, went out after her, and early in the morning ſpied a ſail off *Meyenhead*, near *Artelow* in the county of *Wicklow*, and about thirty miles from *Dublin*, lying afloat in about ten or eleven fathom of water, and about a mile and a half from ſhore, which proved to be the aforeſaid ſhip *Mary*; and on coming up with her, in the laſt quarter-ebb, they found the ſhip lying-to, with her gib-ſail hauled to windward, and her mizen-ſail ſet, and, on boarding her, found her entirely deſerted, without one perſon therein. *Huſſey* v. *Hewit*, tried at *Guildhall*, after *Michaelmas* term, 1747.

After

After the fiſhermen had got in, they ſounded the pumps, and found ſo little water in her, that two hands cleared her in an hour's time, after which ſhe leaked but very little; and ſome few hours after, the fiſhermen meeting with a pilot, agreed with him for half a guinea to carry her into *Poolbeg*, which is a place where ſhips bound for *Dublin*, that draw much water, are unladed and diſcharged, where ſhe was delivered to captain *Wilſon*, who took her in charge, and was afterwards moored, and all her cargo delivered ſafe and undamnified, and the freight accordingly paid for the ſame.

The ſhip was, after her diſcharge, removed from *Poolbeg* to the bank ſide, and there laid on the ground, to ſearch if ſhe had received any damage; and it was found that nine or ten feet of her ſheathing was rubbed off, and about the ſame quantity of her falſe keel broke, and the ſhip ſtrained very much, ſo that they were forced to carry her back to *Poolbeg*, and there moor again.

The plaintiff demanded the whole inſurance, which was 700l. on a ſuppoſed proof of the ſhip's being rendered unfit for any future ſervice, by her being run aſhore as aforeſaid-mentioned; and the defendant tried to invalidate his claim, by firſt endeavouring to prove, that ſhe could not be of near the value inſured, as ſhe was an old *New-England* built ſhip, and ſold a little before, to be broke up, for 150l. but the purchaſer reſold her to another, who ſold the moiety thereof to the plaintiff, as he aſſerts, for 400l. the truth of which ſale the defendant ſuſpects, as well upon account of the lowneſs of the firſt purchaſe, as an eraſure upon which the concern was wrote; and he likewiſe offers ſome reaſons to ſuppoſe that the ſhip was wilfully run aſhore, and not undeſignedly, as the captain aſſerts; and to ſupport theſe allegations, he refers to the manner in which ſhe was found, with little or no damage, as aforeſaid, more than what was occaſioned by her lying aground; that the captain had a very bad character, and it was ſuſpected he made large inſurances, which induced him wilfully to loſe the ſhip; more eſpecially as the mate had declared, that if the captain would have left him two boys he would not have quitted the ſhip, and ſeveral other things to the ſaid purpoſe; but theſe not appearing ſo plain to the jury, they found a verdict for the plaintiff.

The *Weſterwyk's Arms*, captain *Richard Horner*, a *Swediſh* ſhip and commander, was chartered at *Hamburgh*, by Mr. *Jacob Boſanquet*, a merchant there, to ſail for *London*, and there to take in ſuch goods as he or his correſpondents ſhould put on board her, and carry them to ſuch parts of *Italy* as he ſhould be directed. *Boehm* v. *Snow*, *Mich.* term, 1748.

A large quantity of goods were laden aboard her, to the value of 30 or 40,000l. and among the ſhippers the plaintiff was one, who took this opportunity of ſending his friends woollens to the import of 1367l. 12s. 7d. conſigned to one Mr. *Anthony Damiani*, a merchant at *Leghorn*, for the uſe of ſeveral perſons in *Italy*, by whoſe orders they were ſhipped; though with the circumſtance, that the property was not to be veſted in them, neither were they to pay for them, till the goods were arrived and delivered according to the bill of lading, and conſequently remained the plaintiff's property, till the afore-mentioned particulars were complied with, which induced him to get 1000l. inſured on them; and it was mentioned in the policy, that the goods were warranted to be inſerted in the bills of lading, *for neutral account*. This was a cuſtom during a war, in order to ſcreen goods from the enemy's ſeizure; and the captains of neutral ſhips would not ſign bills of lading without this inſertion, which was Mr. *Boehm's* motive for filling up his accordingly; and the ſame occurred with the other gentlemen on ſhipping their goods, as the ſaid warranty and declaration were inſerted in all the policies and bills of lading.

This ſhip in her voyage was taken by a *Spaniſh* privateer, and carried into *Ceuta*, a *Spaniſh* port on the coaſt of *Barbary*, where the goods were condemned as lawful prize, as appears by a copy and tranſlation of the ſentence of condemnation, though the ſhip was ſet at liberty; and the captain, after fruitleſly ſoliciting the releaſe of his cargo at *Ceuta*, went to *Cadiz*, to reclaim it, where, notwithſtanding he was joined in ſolicitations by the *Swediſh* conſul, and both aſſerted the honour of the flag, and the neutral property of the merchandize, they could prevail nothing towards altering of the ſentence, which ſtood confirmed; though, whilſt this was tranſacting, Mr. *Boehm* demanded his inſurance of the underwriters, who, being convinced of the juſtneſs thereof,

of, came to the agreement of paying him 50l. *per cent.* and accordingly endorſed the policy in the following manner, *viz.*

WE, whoſe names are hereunto ſubſcribed, do agree to pay unto the aſſured 50l. *per cent.* on our ſeveral ſubſcriptions on this policy, in a month from the date hereof; but in caſe the goods are reſtored in ſafety, and are diſcharged according to the tenour of the policy, the ſaid 50l. *per cent.* are to be repaid to us by the aſſured, we engaging to make good any average or damages that may enſue by the detention of the ſaid goods.

Signed by all the underwriters.

And afterwards there was likewiſe indorſed the following words, *viz.* "Whereas the within-mentioned ſhip, the *Weſterwyk's Arms*, captain *Horner*, from *London* to *Leghorn*, was taken by the *Spaniards* in *July*, 1746, and forcibly carried into *Ceuta*, where ſhe has been detained with her cargo ever ſince; and, notwithſtanding all the application and endeavours that have been made uſe of by the aſſured and his agents for their releaſe, they have hitherto proved fruitleſs, and without ſucceſs; therefore We, the underwriters on this policy, do agree to pay Mr. *Thomas Boehm*, the aſſured, the remaining 48 *per cent.* in one month from the date hereof, which the ſaid Mr. *Thomas Boehm* obliges himſelf to refund and pay back again, in caſe his ſaid goods ſhould be hereafter releaſed, and arrive ſafe at *Leghorn*, according to the tenor of this policy, we engaging ourſelves to make good any average or damage that may enſue in this adventure; and the aſſured promiſes and obliges himſelf to continue his utmoſt endeavours that his ſaid good may be reſtored and diſcharged.

The preſent defendant only ſigned the firſt of theſe agreements, but never paid the money purſuant thereto; though all the reſt of the underwriters ſigned both, and have paid their money long ago.

The plaintiff proved, that the defendant was acquainted, when he underwrote the policy, with the reaſons for inſerting the words, that the goods ſhould be warranted to be inſerted in the bills of lading for neutral account: *He* alſo proved his intereſt, and that the goods were his, till delivered; that all the underwriters on this ſhip have paid their loſſes, to the afore-mentioned value of between 30, and 40,000*l* and that even the defendant himſelf had paid one on her: He alſo proved by a perſon, *vivâ voce*, who had ſeen the ſhip at *Cadiz*, and heard the captain and *Swediſh* conſul diſcourſe about their ſolicitations for freeing the goods, which, joined to the before-mentioned copy of her condemnation, he thought ſufficient proofs of the loſs; but the defendant being of a contrary opinion, and not ſatisfied therewith, ſtood a trial, when the jury found a verdict for the *plaintiff*.

The *Dartmouth* galley being fitted out as a privateer, ſailed (in company with the *Fortune*) in *October*, 1744, on a cruize, on the plaintiffs being concerned therein, got inſurance made on their part for one calendar month, of which the defendant underwrote 200*l*. and the ſaid ſhips, after being out two days, fell in with two *French* men of war, with whom the *Dartmouth* engaged, and after a gallant defence was taken by them, though not till the captain and two more were killed, and ſeveral wounded, when the lieutenant ſeeing the inequality of the combat, ordered the colours to be ſtruck, and ſurrendered, on which the conquerors ordered the *Dartmouth's* people to hoiſt out their barge, and go as many as could on board the man of war, but the *Dartmouth's* men finding an opportunity ſailed away, and got off; their enemies purſuing and overtaking them, they were obliged finally to ſubmit, and the men of war ſent a lieutenant, with a ſufficient power, to take poſſeſſion of the *Dartmouth*, in whoſe cuſtody ſhe continued only about an hour and a half or two hours; for the lieutenant and his company perceiving ſhe was leaky, by one of the men of war running foul of her, and ſtarting a plank, during the engagement, called to his commanders to ſend a boat for them, as they feared ſinking, which they immediately complied with, and the lieutenant of the *Dartmouth*, and about ninety of her men, were carried into *France*, and the boatſwain being left on board with about twenty more (including nine wounded ones) ſearched for, and in a great meaſure ſtopped her leaks, and taking advantage of the Frenchmen's fears and the night, in two days after got ſafe again into *Dartmouth*; and ſoon after her arrival

arrival there, was refitted by the owners, and ſailed on another cruize. *Jalabert* and *Nevil* v. *Jonathan Collier*, jun. *Trinity* term, 1749, at *Guildhall*.

After this the ſaid ſhip was kept inſured from month to month, and the defendant underwrote ſeveral ſubſequent policies on her, being always told by the office-keeper that he was of the firſt policy, and neither he nor the plaintiff ever pretended to demand any thing of him on account thereof.

In about ſix months after the expiration of the aforeſaid policy, the defendant paid the plaintiffs a loſs on her, having continued to inſure her monthly, from the policy in queſtion, and the plaintiffs when they received it, never ſo much as inſinuated, or pretended they had any right to the firſt inſurance; however, the plaintiffs have now claimed it, as the taking of the ſhip, and carrying of her men away, entirely overſet the cruize, and ſhe could not be refitted and ſail on another before the expiration of the month for which ſhe was inſured, and conſequently this proved an entire loſs to the aſſured; but in ſupport of the contrary, it is alledged by the defendant, and confirmed by the opinion of ſeveral very conſiderable merchants, that this could not be counted a total loſs, more eſpecially as it is not on a cruize, the words of the policy being, *to be inſured loſt or not loſt, to any ports or places, for one calendar month*, but no mention at all made of any cruize; on which account the defendant ſuppoſes there could be no interruption to a thing never guarded againſt; and beſides the ſhip was ſo far from being a total loſs to the owners on the firſt riſque, that ſhe afterwards met with great ſucceſs by taking a very rich prize.

And if this doctrine offered by the plaintiffs had taken place with reſpect to inſurances made for time, every Collier might bring this as a plea, as they are always inſured on thoſe terms, though it was never apprehended, that every little accident which happened within the times and obliged them to refit, was deemed a total loſs.

The plaintiffs were nonſuited, becauſe unprepared to ſhew the impoſſibility of her being fitted out again before the expiration of the inſurance.

The plaintiff cauſed inſurance to be made for himſelf or others, *loſt or not loſt*, on the good ſhip *L'Heureux*, capt. *Beatrix*, from *Bayonne* to *Martinico*, the adventure beginning at and from *Bayonne* to *Martinico*, and *Cape Francois* in *St. Domingo*, with liberty to touch and ſtay at any ports or places whatſoever, without prejudice to the inſurance, and without other proof of intereſt in caſe of loſs, than the preſent policy, and the *French* and *American* livres to be valued eleven-pence each, without further account to be given; and for this the aſſured paid 30 guineas *per cent.* to have twelve guineas *per cent.* returned, in caſe the ſhip ſhould depart with convoy from *Bayonne* or *L'Iſle D'Aix*. *Benjamin Mendes De Coſta* v. *Pouchon*.

The ſaid ſhip ſailed two days after in proſecution of the aforeſaid voyage, and was taken, brought to *London*, and condemned; on which the aſſured demanded of the defendant his ſubſcription, which he refuſed to pay for different reaſons, as will be hereafter mentioned.

Several merchants in *France*, particularly at *Bourdeaux* and *Bayonne*, after the commencement of the *French* war of 1744, fitted out a great number of ſhips under a pretence and appearance of ſending them to the *French Settlements* in *America*, &c. and got them inſured to their full value at *Marſeilles*, and other places in that country; and as the laws of *France* prohibit every perſon from making larger inſurance than what their intereſt is, they, without diſcovering what they had done in their own country, requeſted ſeveral gentlemen here to get inſurance made for them, often to three or four times more than their real intereſt was; and the ſaid ſhips being generally taken or loſt, the underwriters, without ſuſpecting any fraud, paid their ſubſcription, by which means the *French*, concerned in theſe practices, got more than they would have done by any fair adventures.

Theſe ſorts of tranſactions became at laſt ſo notorious in *France*, that Monſ. the Count de *Maurepas*, director of the Marine in that country, about *May*, 1747, took notice of it, and ſent a letter to a merchant at *Nantes* deſiring him to enquire of his correſpondent in *England*, into the valuations of the ſeveral ſhips and cargoes mentioned in the letter (and amongſt them of the *L'Heureux*, captain *Beatrix*, before-mentioned) with the amount of the inſurances made thereon, declaring in the ſaid letter, that there were great frauds committed by perſons of *Bayonne* and *Bourdeaux*, in fitting out ſhips

and

and making large inſurances thereon, and then putting thoſe ſhips in the way of being taken by the *Engliſh*. This gentleman ſent a copy of the above-mentioned letter to Mr. *Henry Loubier*, a merchant of this city, who generouſly communicated the ſame to ſeveral of the principal underwriters; and they in conſequence of this advice, choſe a few gentlemen from among themſelves as a committee to enquire into theſe frauds; and they found that ſeveral gentlemen in *England* had procured inſurances to be made on *French* ſhips from *Bourdeaux* and *Bayonne* to the *Weſt Indies*, either upon the terms of *intereſt or no intereſt*, or without *further proof of intereſt than the policy*, to the amount of 100,000*l.* of which near the half was diſputable loſſes, by there being great reaſon to believe, that theſe inſurances were fraudulent, and among others the ſhip in queſtion; upon which a bill in *Chancery* was filed, and an injunction obtained; but on the plaintiff's ſwearing he knew no fraud, the injunction was diſſolved.

The committee ſent an anſwer to Mr *Maurepas'* letter, authenticated by a notary publick, whereby it appeared, that the ſhip and cargo in diſpute were ſold in *England* for 788*l.* 11*s.* 3*d.* *viz.* The cargo for 388*l.* 11*s.* 3*d.* and the ſhip for 400*l.* and there was inſured on her in *England*, 2790*l.* and at *Marſeilles*, it was found, upon enquiry, that 12,000 livres had been inſured, which (reckoning a livre at 11*d.*) amounts to 550*l.*

The preceding circumſtances were offered to the court in order to diſcharge the defendant from paying the inſurance, but it not being in his power to prove them, though he ſuppoſed them matters of fact, and it appearing plainly that the plaintiff had not in the leaſt been guilty of any fraud, and the policy being expreſsly valued, and that in caſe of loſs, the aſſured ſhould not be obliged to prove his intereſt by any other means whatſoever, ſave by the preſent policy, as is mentioned in the beginning of this caſe, and had paid an adequate premium to the riſque, which to the underwriters was rather leſs than would have been on an intereſt to be proved; as in this latter caſe they are liable to averages, which on policies like this in queſtion of *intereſt or no intereſt*, they are ſolely anſwerable for a total loſs; and the jury found a verdict for the plaintiff.

The ſame was tried on three other ſhips under the ſame circumſtances, on which large ſums had been inſured, and had the ſame determination.

The plaintiff, being concerned in the *Salamander* privateer, made inſurance on her, as well in his own name, as for and in the name and names of all and every other perſon or perſons to whom the ſame did, might, or ſhould appertain, in part or in all, loſt or not loſt, at and from the *Downs*, or elſewhere, to any ports or places whatſoever, for and during the ſpace of three calendar months, to commence from the 21ſt of *December*, 1744, upon the body, tackle, *&c.* of the ſaid ſhip; and to continue until the ſaid ſhip, with her tackle, *&c.* ſhould be arrived at, as above-mentioned, and there had moored at anchor twenty-four hours in good ſafety; and it ſhould be lawful for the ſaid ſhip in that voyage, to proceed and ſail to, and touch, and ſtay at, any ports or places whatſoever, without prejudice to that inſurance; the ſaid ſhip, *&c.* for ſo much as concerned the aſſured, was and ſhould be valued at, *intereſt or no intereſt*, free of average, and without benefit of ſalvage to the aſſurers, touching the adventure, *&c.* which they, the aſſurers, are contented to bear, and did take upon them in that voyage, *&c.* and in caſe the ſaid ſhip ſhould not be heard of, in twelve months after the expiration of the above-mentioned three months, the aſſurers agreed to pay the loſs, and the aſſured to repay the ſame, if afterwards the ſaid ſhip ſhall be heard of in ſafety. The defendant underwrote two different hundred pounds at ſeparate times, on the aforeſaid policy, and the ſhip proceeded on her voyage, on the 21ſt of *December* as above-mentioned, and was taken by the *French*, on the 2d of *February* following, after an engagement of more than an hour with a much ſuperior force, and after ſeveral of her men were killed and wounded; and being thus conquered, 117 of her men, including the captain and all the officers, moſt of her ſmall arms, and the commiſſion were removed into the enemy's ſhip, and carried into *France*, leaving only ſeventeen *Engliſh* on board the *Salamander*, of which five ſoon after died of their wounds, and two *French* officers with twenty-four of their men; and the ſaid ſhip was in poſſeſſion of theſe their adverſaries, from four of the clock in the afternoon of the ſaid 2d day of *February*, until five of the clock in the afternoon of the 5th day of the ſame month, during all which time ſhe was abſolutely in the power of the enemy, and was, at the laſt mentioned period,

retaken by the *Hunter* privateer, capt. *Richard Veale*, who put thirty of his men and two officers on board her, and kept her cruizing with him for eight days, when the ſaid captain *Veale* engaged, and took a *French* ſhip, with which, together with his own ſhip and the *Salamander*, he endeavoured to gain ſome port in *England* or *Ireland*, but the wind and weather not permitting, he carried them all to *Liſbon*, a neutral port, where he lay a conſiderable time; during which captain *Veale* took out of the *Salamander* two carriage guns, and thirty hundred weight of bread for his ſhip's uſe; and the captain of the *Durſley* privateer, being in partnerſhip with the *Hunter*, alſo took out two carriage guns for the uſe of his ſhip; of all which captain *Veale* made a manifeſt, and ſent to his owners, that they might be accountable for them where they ought. *Pond* v. *King*.

Captain *Veale* levied and inſtituted a cauſe or ſuit in the Vice Admiralty court at *Gibraltar*, againſt the ſaid ſhip, the *Salamander*, &c. and on the 29th of *April*, 1745, obtained a decree from the judge thereof, that the ſaid ſhip, *&c.* ſhould be reſtored to her rightful owners, they paying, in lieu of ſalvage, one third part of the full, true, and real value thereof, free and clear from all charges and deductions whatſoever; but as her capture had intirely overſet her voyage before the expiration of the three months, for which ſhe was inſured, the plaintiff demanded the inſurance of the defendant, which being denied, he ſued him for the ſame; and on the trial at *Guildhall*, the jury brought in their verdict *ſpecial*, which occaſioned its being argued before the judges of the *King's Bench* in *Hilary* term, 1746, and the diſpute in queſtion ſeemed to turn on this point, *viz.* whether a policy made free of average can affect the inſurer but by a total loſs. This was ſtrongly urged in favour of the defendant, whoſe counſel ſuppoſed that the recapture prevented the total loſs which would have happened, had the enemy carried her into *France*; and that he was freed by the policy from payment of the average ordered to be paid in lieu of ſalvage, ſo that conſequently the plaintiff's demand on him was ill founded and unjuſt; but the arguments on the contrary ſide being ſtrong and concluſive, I ſhall tranſcribe the greateſt part of them; and the queſtions now upon the ſpecial verdict are two, one to be conſidered upon the firſt, the other on the ſecond count in the declaration

1ſt. *Whether* the property of the prize was diveſted by the taking; and

2dly. *Whether*, as it is found that the voyage was totally broke, and the purpoſe thereof defeated by the capture, and no reſtitution made to the owners, there is not a breach of the policy, ſufficient to give the plaintiff a right of action, notwithſtanding the recapture, and though the property be not changed, and the inſurance be made free of average.

1ſt. It is found that the ſhip was taken by the enemies as a prize, and that a hundred and ſeventeen men, including the captain and officers, with the greateſt part of the ſmall arms, commiſſion, *&c.* were carried into *France*, and only ſeventeen men were left on board, all of which, except three, were wounded, and five of them died ſoon after, ſo that they were not able to navigate the ſhip: but two *French* officers and twenty-four men were put aboard, and the ſaid ſhip ſo conquered remained in the poſſeſſion of the enemy, from the 2d to the 5th of *February*, and during all that time, was abſolutely in their power; and that thereby the voyage inſured was totally prevented.

These facts, according to the laws of *France*, *Spain*, *Holland*, *Sweden*, and other *European* nations, are ſufficient to diveſt the property of the prize; but according to the opinion of ſome writers, who draw their notions from the rule of the *civil law*, the property of a ſhip taken at ſea, is not diveſted till the prize is brought *infrà fines*, or *infrà preſidia capientium*.

If the queſtion therefore is to be determined by the preſent law of nations, it is with the *plaintiff*, for thereby the property of a prize is changed,

By a firm poſſeſſion of twenty-four hours.

But if by the opinion of certain doctors of the *civil law*, it is againſt the *plaintiff*;

The prize not being brought *infrà fines hoſtium*.

It ſeems to be agreed by all the contending writers upon this queſtion, that the legal principle, which veſts the property of a prize, is

Such a taking as enables the captor to retain and defend the poſſeſſion, but their diſpute is concerning what circumſtance is declarative of ſuch ability, and upon this head it is that a variety of difficulties have aroſe.

For

Van Bynkerſhock, ſpeaking to this, ſays,

" Quando autem ita adepti videamur poſſeſſionem, ut retinere, vel non retinere " poſſimus, cauſarum varietas definire non permittit."

They all likewiſe agree, that when the *ſpes probabilis recuperandi* is loſt, or the parties may be ſaid *depoſuiſſe animum recuperandi*, the property becomes the captor's.

But they cannot ſettle what ſhall be evidence thereof, though they confeſs it would be beneficial to the publick, and reaſonable in itſelf, to put an end to an infinity of litigation, by reducing the queſtion to a certainty; yet, notwithſtanding ſo neceſſary an end is fully agreed upon, the means leading to it are not: the doctors, adhering zealouſly to the rules of the *civil law*, contend, that the *criterion* for determining the queſtion, ſhall be a bringing the prize *infrà præſidia*; the law of nations regarding the general intereſt and convenience of the ſubjects, and to give all poſſible encouragement in the time of war for the retaking of prizes from the enemy, hath ordained that a poſſeſſion of twenty-four hours ſhould be ſufficient.

And now it is for the judgment of the court, to which ſide they will pay the deference; that is, whether to the opinion of ſuch doctors, as *Alber. Gent. Petrinus Bellus*, and *Van Bynkerſhock*, or to the law and conſtant practice uſed in other nations.

If they adhere to the doctors, the queſtion is not finally ſettled amongſt them, for ſome contend, that there muſt be a bringing *infrà fines capientium*, others only *infrà claſſem*, and ſome into a neutral port, &c. and ſome go ſo far as to ſay, that after a bringing *infrà præſidia* there muſt be a ſailing to a new deſtination.

But by the law of nations, of modern or later inſtitution, the certainty ſought for is definitive, *viz.* a poſſeſſion of twenty-four hours; and the authorities to prove the law of nations on this queſtion, are,

1. " Recentiori jure gentium inter *Europeos* populos introductum videmus ut talia " capta cenſeantur, ubi per Horas viginti quatuor in poteſtate hoſtium fuerint. *Gro.* " L. 3. Cap. 6. S. 4.

2. " La coutume vient des anciennes Loix D'Allemagne, & elle a etablie limitation " de l'eſpace de 24 heures qu'elles limitérent non ſans raiſon. *Barb. Notes on Grotius*, L. " 3. Cap. 6.

3. " La même choſe ſe pratique en *Angleterre*, & dans le Royaume de *Caſtille*. " *Idem.*

4. " Sed hodie naves ab hoſte captæ communi inter Chriſtianos & *Europeos* populos, " —ſive jure, ſive conſuetudine poſtliminio—non recipiuntur ſi hoſtis eas non eodem " die navali pugnâ iterum amiſerit, ſed ſi per viginti quatuor horas in poteſtate victo- " ris fuerint tunc enim verè captæ, & proprii juris factæ cenſentur. *Locenius de Jure* " *Maritimo*, &c. L. 2. C. 4. S. 14. *Zouch de Jure Feciali*, Part 2. S. 8. 21.

5. " Quicquid verò clariſſimi interpretes diſputent de prædâ prius in præſidia deducendâ, quàm fiat poſſidentis, aliud tamen conſuetudine & moribus *Europeorum* hodie " obſervatur, ut nimirum præda capientium fiat, & præſertim naves hoſtium de quibus " hic ſermo eſt, ſi a victore per diem & noctem poſſeſſa fuerint. *Loc.* L. 2. C. 4. " S. 8.

6. " Si aucun navire de nos ſujets eſt repris ſur nos ennemis après qu'il aura de- " meuré entre leur mains pendant 24 heures, la priſe en ſera bonne, & ſi elle eſt faite " avant les 24 heures, il ſera reſtitué au proprietaire. *Ordon. touchant la Marine, Tit.* " *Prizes, Art.* 8.

7. " *Simon Greenewegen*, an author frequently quoted as an authority by the beſt wri- " ters, and who was a celebrated lawyer * in the laſt century, and of a family that had " for a long courſe of years ſat at the helm of the government, proves that the law re- " quiring a ſhip to be brought *infrà præſidia* is abrogated, and puts it down as ſuch in his " treatiſe *De Legibus abrogatis, & inuſitatis in* Hollandiâ, *vicinisque Regionibus*, where he diſ- " tinguiſhes what ſhall be ſaid to be prizes by the *civil law*, and what by the law of na- " tions; to which end, in *Lib.* 49. *Tit.* 15. *de Captivis*, &c. he makes ſeveral diviſions " and ſubdiviſions of the ſubject, and has two ſubdiviſions *de navibus, viz.* Firſt *Captæ*, " quæ dicuntur jure civili; Secondly, *Gentium*; and, under this head *Gentium* quotes " the paſſage aforeſaid from *Grotius* and adds, that now in *Holland* a prize may be good, " *nullo habito reſpectu temporis, quo navis in hoſtium poteſtate fuerit, dum tamen infrà præſidia* " *perducta non fuit.* Sim. Grec. De Leg. Abr. p. 353." * Dict. Mor.

As by the law of other nations a poſſeſſion of twenty-four hours undoubtedly diveſts the property of a prize, one might conclude that, as this queſtion has not been judicially determined by this court, it would be reaſonable to put the ſubjects of *England* upon the ſame footing with thoſe of *France*, *Spain*, *Holland*, *Sweden*, &c. eſpecially in mercantile contracts, which ought to have the ſame conſtruction in one trading country as another, and more eſpecially as this kind of inſurance, *intereſt or not*, is a branch of trade peculiar to us. But if this will not do, the queſtion upon the ſecond *count* is to be conſidered, which is,

Whether, upon this *count*, there hath not been a breach of the policy, or contract of inſurance, ſufficient to give the plaintiff a right of action, upon *intereſt or not?*

It was found that the prize was fitted out to cruize againſt the king's enemies; that all her men, except ſeventeen, as aforeſaid, were taken and carried into *France*, and thoſe left, not able to navigate the ſhip, and that the voyage deſcribed in the policy was thereby totally prevented; and that, at the time of the verdict, the ſhip remained at *Liſbon*, not reſtored to the owners.

This ſeems to be a breach, taking the policy either upon the ground of

A CONTRACT or a WAGER.

Conſidering it as a *contract*, the agreement is, that the ſhip ſhall not be prevented in the voyage, by any of the perils or riſques in the policy, amongſt which are all *ſurpriſals* at ſea, *arreſts*, *reſtraints*, and *detainments* of all kings, princes, and people whatſoever; and *here* has been a ſurpriſal at ſea, and a detention, whereby the whole voyage inſured was totally broke, as is found by the verdict; and this is a much ſtronger caſe than *Depaiba* and *Ludlow*, where the court, for very good reaſons, determined unanimouſly for the plaintiff, as appears by the judgment of lord chief juſtice *King*, delivered as the opinion of the whole court; whereby it alſo appears, that a total loſs is not neceſſary in all caſes to give the plaintiff a right of action upon a policy, *intereſt or not*.

The defendant's counſel inſiſted in his argument, that as the policy was made free of average, nothing could affect the inſurer but a total loſs, becauſe all other loſſes are included within the import of average, by the words of the contract.

This is a miſtake, and appears to be ſo from the words of the policy, which immediately follow, *viz. and without benefit of ſalvage to the inſurer.*

If nothing but a loſs of the whole could affect the inſurer, is it not conſiſtent that he ſhould renounce the benefit of ſalvage; for what could he have to do with ſalvage, in caſe he was chargeable if any thing was ſaved?

This therefore is a conſtruction not warrantable, being abſolutely inconſiſtent with the expreſs words of the policy, which are *free of average, and without benefit of ſalvage to the aſſurer.*

And as ſuch a conſtruction is inconſiſtent, another is to be ſought, which is not ſo repugnant, and which may permit the words before-mentioned to ſtand with more propriety, and this may be done by confining the import of average to a limitation; and the definition of average in the firſt article of the ordinance of *Fontainbleau, touchant la Marine, Titre Avarie*, eſtabliſhes ſuch a limitation of the import of this word as will give it a conſiſtent place, as it ſtands in a policy of inſurance: It is by the ſaid *Ordon.* defined thus;

" Toute depenſe extraordinaire qui ſe fera pour les navires et marchandiſes con-
" jointment ou ſéparément, et tout dommage qui leur arrivera depuis leur charge
" et départ, juſques à leur retour et décharge, ſeront reputés avaries. *Ordon.* of
" 1681, *Tit.* 7. *des Avaries.*"

And it is certain, the true import of the word average is, ſuch damages as happen to the ſhip or cargo during the voyage, as the loſs of anchors, maſts, cables, *&c.* but that which breaks up the voyage, as, in this caſe, a capture by enemies, whereby the whole end, purpoſe, and deſign of the cruize was abſolutely defeated by the actual taking of all the men, arms, proviſions, commiſſion-officers, &c. cannot, from the obvious nature, circumſtances, and reaſon of the thing, and the authority of the caſe of *Depaiba* and *Ludlow*, be eſteemed barely as an average to which the inſurer is not liable,

liable, but muſt be conſidered as a total breach of the contract of inſurance to which he is liable.

If the conſtruction contended for by the defendant was to prevail, the inſurer would rather be indemnified from than ſubjected to the perils inſured againſt; for if a taking happens at the beginning of a voyage, inſured from one port to another, or for time only, and the voyage be thereby broke up, or the time elapſed, the recovery of the ſhip will ruin the inſured, and be a general releaſe to the inſurer, who will alſo be thereby indemnified from all the riſks in the policy; whereby, if no ſuch capture had happened, the ſhip might have been loſt, and a capture and detention breaking up the voyage inſured, might put the inſurer in a better condition than if there had been no capture at all, which cannot be the meaning of the parties, being inconſiſtent with the apparent deſign of an inſurance.

Beſides, in this caſe, the ſhip inſured is not to this hour, as appears by the verdict, reſtored to the owners; neither was it * worth their while to pay ſalvage and charges, and raiſe men to bring her home; and ſuppoſe they had, and ſhe had been taken again by the enemy, the time of inſurance was expired, and the inſurer in ſuch caſe would have ſaid he was not liable.—Therefore muſt be conſidered as a total breach of the policy, and not as a bare average. * *Hartley* v. *Pringle*; held by L. Chancellor, that the inſured might abandon.

1ſt. Here was a taking and a detention.

2dly, All the men, commiſſion-officers, *&c.* taken and carried into *France*, and never retaken.

3dly, Though ſhip retaken, not reſtored, and poſſibly never may.

4thly, If reſtored, her men, arms, proviſions, *&c.* being taken, could not purſue the purpoſe of the voyage, and therefore the inſured may abandon the benefit of the ſalvage.

5thly, The verdict has found the voyage was thereby totally defeated, and that is ſufficient.

There are many caſes where the plaintiff on a policy, *intereſt or not*, has recovered, though no total loſs of the ſhip, but becauſe by the perils in the policy, ſhe was rendered unable to perform the voyage, as in the caſe of the *Ludlow Caſtle*, and the caſe of the *Providence*, between *Carter* and *Barrel*, where the ſhip came into *St. Ives*, bound for *London*, but being leaky, the cargo was unladed, and the ſhip ſold at *St. Ives*; though it was proved ſhe might, at a conſiderable expence, have been made fit to perform the voyage, yet, as without it, the voyage could not be performed, the *plaintiff* recovered, though no loſs at all of the ſhip.

So, in the preſent caſe, if the ſhip had been retaken in an hour, ſhe could not have purſued the voyage; for all the men, *&c.* were taken and carried into *France*, and therefore ſhe could not navigate herſelf, neither could ſhe have performed the voyage inſured.

But, taking it upon the footing of a *wager*, as put by the defendant's counſel, what is the *wager*? It is, that ſuch a ſhip, for and notwithſtanding any arreſts, reſtraints, *&c.* will ſail from *London* to *Jamaica*, or ſail for three calendar months upon a cruize, as the adventure may be. If, therefore, by any arreſt, taking, detention, *&c.* the ſhip is totally prevented from proceeding in the voyage, is not the wager loſt? Has not the contingency inſured againſt happened?

Upon this caſe, for the reaſons aforeſaid, and many others ariſing upon the nature of the contract of aſſurance, and particularly upon the authority and reaſon in *Depaiba* and *Ludlow*, the plaintiff hoped for the judgment of the court in his favour, which accordingly was given; and the judges were unanimous in their opinion.

I HAVE enlarged conſiderably on this caſe, more than on any others, as it is that which ſettled definitively this nature of inſurance, which before was almoſt always conteſted, when any little difficulty happened; and though the late act prohibits the continuance of a buſineſs it deems hurtful to the publick, yet this deciſion may be a government for diſputes in other parts where it is permitted, or in caſe the aforeſaid act ſhould ever be repealed.

Caſes

Caſes of Warranty to ſail with Convoy.

A SPECIES of warranty, which moſt frequently occurs in policies of inſurance, in time of war, is that of ſailing under the protection of convoy; that is, certain ſhips of force, appointed by government, to ſail with merchantmen from their port of diſcharge to the place of their deſtination. When the nature of a convoy is conſidered, it is highly reaſonable that the policy ſhould be forfeited, if the inſured fail to comply with ſo material a condition; becauſe the riſque which the underwriter takes upon himſelf is very conſiderably increaſed, in time of war, by the want of convoy. Accordingly, by the laws of this, and of all other maritime powers, if the inſured warrant that the veſſel depart with convoy, and it do not, the policy is defeated, and the underwriter is not reſponſible.

We have already ſeen, that every warranty muſt be ſtrictly and literally complied with, and that a liberal and ſubſtantial performance, merely, will not be ſufficient. hence, in a warranty *to ſail with convoy*, it becomes material to conſider what ſhall be deemed *a convoy*, within ſuch a condition. Upon this point it has been ſolemnly ſettled by the court of *King's Bench*—"That it is not every ſingle man of war, which "chuſes to take a merchant-ſhip under its protection, that will conſtitute ſuch a convoy "as the warranty means; but it muſt be a naval force, under the command of a "perſon appointed by the government of the country to which they belong." The reaſon of ſuch a deciſion is wiſe, becauſe government muſt be ſuppoſed to be better informed of the deſigns and ſtrength of the enemy, and what degree of force will be ſufficient to repel their attempts. But let it be obſerved, that a ſingle man of war, frigate, or ſloop may be deemed ſufficient to protect one or more merchantmen; and if the captain has received his orders to protect them, though his force may prove inſufficient, and the ſhips are captured, this is to be conſidered as ſailing with convoy according to the warranty in the policy.

The caſe, in which the above points were ſettled, came before the court upon a rule to ſhew cauſe why the verdict, which the defendant had obtained, ſhould not be ſet aſide, and a new trial had. It was an action to recover upon a policy of inſurance on the ſhip *Arundel*, captain *Mann*, at and from *Jamaica* to *London*, *warranted to depart with convoy*. The facts appearing, on the report of lord *Mansfield*, who tried the cauſe, are theſe: On the 25th of *July*, the *Arundel* ſailed from *Morant* harbour to *Kingſton*, where ſhe met the *Glorieux* man of war, captain *Cadogan*, who was likewiſe on his way to join admiral *Graves* at *Bluefields*. Lord *Rodney* had appointed admiral *Graves* to rendezvous at *Bluefields*, in order to take the fleet of merchant-ſhips, which were to ſail from thence upon the 1ſt of *Auguſt*, under his command, and to convoy them to *Great Britain*. Captain *Mann*, upon their meeting in *Kingſton* harbour, aſked for ſailing orders from captain *Cadogan*, who ſaid he had none, not having himſelf at that time joined the admiral; but he was ſure that admiral *Graves* would not ſail from *Bluefields* till the *Glorieux* joined him: However, if he ſhould have ſailed, he, captain *Cadogan*, would give captain *Mann* ſailing-orders, and take every care of the *Arundel* in his power. They proceeded together, and arrived at *Bluefields*, on the 28th of *July*; but they found that admiral *Graves* had ſailed two days before. The *Glorieux* and *Arundel* then ſailed from *Bluefields*, the former firing guns, giving ſignals, and behaving in every reſpect *like a convoy*. Upon the 5th of *Auguſt* a ſignal was made that the fleet was in ſight, and on the *ſeventh* they joined it off *Cape Anthonio*. The *Arundel* was loſt in *September* in a dreadful ſtorm, which diſperſed the whole fleet, and in which a vaſt number of the ſhips periſhed. Upon this evidence, the jury were of opinion, under the direction of the chief juſtice, that the terms of the warranty had not been performed; and they therefore found a verdict for the underwriters, defendants in the cauſe. After this queſtion had been fully argued at the bar, the three judges, Mr. juſtice *Aſhurſt* being at that time one of the lords commiſſioners of the great ſeal, delivered their opinions generally. *Hibert* v. *Pigou*, B. R. *Eaſt.* 1783.

Earl *Mansfield*—"Though the underwriters and inſured are equally innocent, yet I cannot help ſaying, that now, as well as at the trial, my inclinations led me to wiſh, that

that the plantiffs were in the right. But the more it is argued, the leſs it is liable to diſpute. There are *hypothetical* contracts and *conditional* contracts. In the former, the contract depends upon an event taking place; there is no latitude, no equity; the only queſtion is, has that event ever happened?" Then going over the particulars of the caſe, and amongſt other things referring to the uſage of merchants, as to what is eſteemed a convoy by them, that *a convoy is a naval force, under the command of that perſon whom government has appointed*, he applies it to the facts given in evidence at the trial; and decides, that at the time of ſailing from *Bluefields*, where the riſk of the voyage commenced, the *Glorieux* was no part of the convoy, and therefore the warranty was not complied with.

Mr. juſtice *Willes* differed in opinion from lord *Mansfield*: He went upon this ground, that the terms of the policy had been *liberally* and ſubſtantially complied with. "When captain *Mann* found that the fleet was gone, he did every thing in his power for the ſecurity of the ſhip; for he put himſelf under the protection of the *Glorieux*, which was appointed by lord *Rodney* to make a part of the convoy. The loſs of the *Arundel* happened long ſubſequent to her joining the fleet; I am therefore of opinion, that the warranty in this policy has been ſubſtantially performed."

Mr. juſtice *Buller*—"In deciding this caſe, it is not neceſſary to ſay, whether ſailing-orders are eſſential or not. The preſent queſtion is ſimply this: Did the *Arundel* ſail with convoy? This is a condition which muſt be *literally* complied with, as all the caſes agree. As to the queſtion itſelf, it is a queſtion of fact; and the facts of the caſe ſeem to me to prove that the *Glorieux* was no part of the convoy. Admiral *Graves* had ſailed before they arrived; and that circumſtance which lord *Mansfield* ſtated ſeems very material, that no orders were left behind for the *Glorieux*. I ſay, that, on this evidence, ſhe was no part of the convoy; for, in order to make her ſo, it muſt appear that ſhe was under the orders of *Graves*. Did he leave her behind to take care of the ſhips that remained? If ſo, it would alter the caſe very materially. But there was no ſuch idea; for, if there had, the *Glorieux* would have remained at *Bluefields* for the reſt of the ſhips until the *firſt* of *Auguſt*: On the contrary, captain *Cadogan*, finding that admiral *Graves* was gone, immediately followed; for his ſole object was to join that admiral. *Ships muſt ſail under the convoy appointed by the government of the country*, who proportion the ſtrength of it to the neceſſity of the times. To what end would this care be taken, if merchantmen were to ſail under the protection of ſingle ſhips, which they may happen to meet? I am therefore of opinion, that if a ſhip do not ſail with the convoy appointed by government, it is not *a ſailing with convoy*, within the terms of the policy." The rule for a new trial was then diſcharged.

Although the deciſions of the court of *King's Bench* require no additional authority to ſupport them, yet it will be proper, by way of illuſtration, to point out to the reader in what caſes the opinions of foreign writers agree with the determinations of the *Engliſh* courts of juſtice. Monſieur *D'Emerigon*, a very diſtinguiſhed writer upon this branch of juriſprudence, puts this caſe: "On avoit fait des aſſurances ſur une navire, de ſortie de *Marſeilles* juſqu' aux detroits de *Gibraltar*; et dans la police il étoit dit, que le navire partiroit de *Marſeilles* ſous l'eſcorte d'un batiment de roi; autrement, aſſurance nulle. Une fregate, chargée de munitions de guerre pour *Algeſiras*, ſe trouvoit à *l'Eſtague*. Le navire aſſuré mit à la voile ſous les auſpices de cette fregate qui lui accorda protection, et qui partit en meme temps. Conſulté ſur ce cas, je fus d'avis qui ſi le navire étoit pris par les ennemis, les aſſureurs ſeroient fondés à refuſer le payment de la perte: *car une choſe eſt d'etre ſous l'eſcorte d'un batiment de roi, et autre choſe eſt de navigguer ſimplement ſous ſes auſpices!!* *Park's* Syſtem of Mar. Law.

Having now ſeen what ſhall not, and what ſhall be deemed *a convoy*, let us proceed to inveſtigate and confirm, by caſes, what ſhall be conſidered as a departure with convoy, within the meaning of *a warranty in the policy to depart with convoy*. The rule in this caſe is ſhort and clear, that ſuch a warranty implies that the ſhip ſhall go with convoy from the uſual places of rendezvous, at which the ſhips have been accuſtomed to aſſemble; as *Spithead* or the *Downs* for the port of *London*, and *Bluefields* for all the ports in *Jamaica*. And that ſuch warranty does not limit the ſhip to depart with convoy, from her port of lading or diſcharge, but protects her by the aſſurance, while on her way from ſuch port to the uſual rendezvous to join the convoy. This doctrine was admitted, and has been made a precedent ever ſince, in the following remarkable caſe.

The

The plaintiffs being merchants reſiding at *Gibraltar*, and one of them coming to *London*, to purchaſe goods fit for that place, bought to near the value of 3000*l.* and, in order to forward them to the aforeſaid place, he took freight on the ſhip *Ranger*, captain *Taylor*, which he ſaw put up, as accuſtomary, at the *Royal Exchange* and *Portugal* coffee-houſe, with a declaration inſerted in the ſaid advertiſement, *that the ſhip was to ſail with the firſt convoy*; and in conſequence thereof he ſhipped his merchandize, and made inſurance thereon, to the amount of 2830*l.* inſerting in the policy the words, *warranted to depart with convoy*, in conformity with the above-mentioned placart of the captain. *Gordon* and *Murray* v. *Morley* eſq; at the Sittings after *Mich.* term 1746, at *Guildhall*.

The ſhip, when laden, ſailed from *Graveſend* the 4th of *May*, 1746, on her voyage, and arrived in the *Downs* the 7th, where ſhe continued to the 12th, in company with the *Otter* ſloop of war, ſome *Engliſh* merchant-ſhips, and three *Dutch Eaſt-India* ſhips.

Captain *Taylor*, whilſt he lay in the *Downs*, having received intelligence that the convoy at *Spithead* was ready to ſail, went on board the *Otter* ſloop, in order to ſolicit the commander's taking him under his protection to *Spithead*; but this the ſaid gentleman informed him was not in his power to comply with, as he was ordered on a cruize over to the coaſt of *France*; whereupon captain *Taylor* went on board the commodore of the *Dutch Eaſt-India* ſhips, who promiſed to take the *Ranger* under convoy to *Spithead*.

On the ſaid 12th of *May*, the *Otter* ſloop, the *Dutch*, and the *Ranger* weighed anchor, as did alſo ſome *Engliſh* ſhips, for the benefit of that convoy; and a few hours after they were under ſail, the *Otter* ſloop parted from them on her cruize, and the *Ranger* proceeded and kept company with the three *Dutch* ſhips till between four and five o'clock the next afternoon, being the 13th, when, in her direct courſe to *Spithead*, ſhe was attacked by a *French* privateer, called the *Reſource*, within three miles of the *Dutch Eaſt-India* men, and eighteen of *Spithead*, where ſhe was to join the convoy for *Gibraltar*, and, after ſome reſiſtance, ſhe was taken and carried into *Havre de Grace*, and there regularly condemned.

The plaintiff, on the aforeſaid capture, applied to the reſpective underwriters, and among them to the defendant, requiring ſatisfaction for his loſs; but they abſolutely refuſed paying any thing, inſiſting, that the ſhip had not ſailed according to the terms of the policy, *viz. at and from* London *to* Gibraltar, *warranted to depart with convoy*; but as ſhe departed without convoy which ſhe ought not to have done, but was taken in conſequence thereof, the inſurers are not held to ſatisfy a loſs, which they never obliged themſelves to be anſwerable for; that the ſhip ought to have ſtaid till a convoy had offered, and not gone to ſeek one at ſuch a diſtance, as evidently expoſed her to be taken in getting thither.

On the contrary, the plaintiffs pleaded, that they had complied with the tenor of the policy; that the defendant miſconceived the natural conſtruction of the words, *warranted to depart with convoy*, as they did not imply, that the ſhip ought to have departed with convoy from the port of *London*, as the rendezvous for ſhips bound to *Gibraltar* and the *Straits* is generally at *Spithead*, where they join the convoy; and although there may poſſibly be an inſtance or two of a convoy ſailing from the *Nore* and the *Downs* to *Gibraltar*, yet this is an uncommon accidental thing, and was not to have been expected on that occaſion; on the contrary, it was then known that the convoy for thoſe parts was to be at *Spithead*, and many ſhips went there from *London* to take the benefit of it, ſo that the warranty could only be underſtood from *Spithead*, as it was from the convoy there the captain was to take his ſailing orders; beſides, as it was unſafe to lie in the *Downs* without a man of war, the plaintiff conceives the *Ranger* would have run a much greater riſk, in continuing there after the *Otter's* departure, than ſhe did in ſailing with her and the *Dutch* ſhips, though they were no regular convoy; and the plaintiff paid the ſame premium for his inſurance as given on ſeveral ſhips at the ſame time, with a warranty to depart from any port of the channel; and it was the opinion of ſeveral merchants, that ſhips, ſailing with convoy, are to make the beſt of their way to the convoy, and not to ſtay for any intermediate one.

The jury found a verdict for the plaintiff.

A ſimilar deciſion was made in the year 1781, by the admiralty of *France*, which is reported in the work of *Emerigon*. Upon this kind of warranty, however, it is to be obſerved, that although the words commonly uſed are, to *depart* with convoy, or to

ſail with *convoy*; yet they extend to ſailing with convoy throughout the whole of the voyage, as much as if thoſe words were inſerted. Indeed to ſuppoſe the contrary would introduce a variety of frauds; as a ſhip would ſail out of harbour with the convoy, continue with it for an hour or two, then leave it, and run every peril, at the riſque of the underwriter. Therefore, a ſhip warranted to ſail with convoy to her deſtined port of delivery, and putting herſelf under the protection of a convoy deſigned to go only part of the voyage with her, and then to take under its charge merchantmen for ſome other deſtination, though ſhe could find no other *convoy* in the port of her departure, is not juſtified in ſailing with ſuch a convoy.

This was decided by an action brought for money had and received by an underwriter, for a return of premium. The policy was on the ſhip the *Parker Galley*, "at and from *Venice* to the *Currant Iſlands*, and at and from thence to *London*, at a premium of 5 guineas *per cent.* to return 2 *per cent. if the ſhip ſailed with convoy from* Gibraltar, *and arrived.*" The ſhip touched at *Gibraltar* on her way home, and ſailed from thence under convoy of the *Zephyr* ſloop of war; *but the convoy was deſtined only to go to a certain latitude, about as far as Cape Finiſterre*, being ordered on the *Liſbon* ſtation; and accordingly, the ſhip and convoy ſeparated, and the ſhip arrived ſafe at *London*. The only queſtion in the cauſe was, whether, by the terms of the policy, the condition for the return of premium was, *a departure from* Gibraltar *with ſuch convoy as could be met with, for whatever part of the voyage that might happen to be, or a departure with convoy for the voyage.* The trial came on before lord *Mansfield*, and a common jury, when a verdict was found for the plaintiff. *Lilly* v. *Ewer.*

This verdict gave great diſſatisfaction to the merchants in the city, and more eſpecially to the underwriters; and a rule was obtained to ſhew cauſe why there ſhould not be a new trial. The evidence, from his lordſhip's report, appeared to be this: The plaintiff had called witneſſes, one of whom was Mr. *Gorman*, an eminent merchant, to prove that for ſome years paſt, when convoy *for the voyage*, or *the whole voyage*, was intended, thoſe explanatory words had been added; and that, by this uſage, the expreſſions of *ſailing with convoy*, and *ſailing with convoy for the voyage*, had received diſtinct technical meanings; *with convoy*, ſignifying, whatever convoy the ſhip ſhould depart with, whether for a greater or leſs part of the voyage. Several policies were alſo produced, which had been filled up at the office of the ſame broker who had prepared that which had given occaſion to this cauſe, in which the words *for the voyage*, or *for England*, were added. The captain proved, that at the time when he left *Gibraltar* no other convoy was to be had. The witneſſes for the defendant ſwore, that they underſtood the words *with convoy* to mean *convoy for the voyage*; and the broker ſaid, that at the time this policy was ſigned, he underſtood, and apprehended it was ſo underſtood by all the parties, that the convoy was to be for the voyage, and that the return was ſuch as was uſual, when convoy for the voyage was meant.

The caſe being fully argued at the bar, lord *Mansfield* afterwards gave his opinion in favour of making the rule abſolute for a new trial. His lordſhip took notice, that, *on the words*, he was ſtrongly of opinion, that the policy meant a departure with convoy intended for the voyage; yet he thought that the evidence was properly admitted at the trial, becauſe the ſenſe contended for by the plaintiff was not inconſiſtent with the words of the policy, and therefore it was material to ſee what was the uſage. His lordſhip further ſaid, that he laid great ſtreſs on Mr. *Gorman*'s teſtimony, whom he did not conſider as a common witneſs; and concluded with this memorable obſervation, of the firſt importance to the mercantile world, and which we cannot but wiſh the lawyers would adopt: "Certainly critical niceties ought not to be encouraged in commercial concerns; and wherever you render additional words neceſſary, and multiply them, you alſo multiply doubts and criticiſms. It may be hard, becauſe words have been added in ſome inſtances, to force a conſtruction in this caſe, from the omiſſion of them." On theſe grounds the court granted a new trial, which came on before lord *Mansfield* at the ſittings after *Trinity term*, 1779, when a verdict was found for the defendant, the underwriter.

But although it has been ſettled, that a ſhip muſt depart with convoy for the whole voyage, yet in the laſt caſe it was truly ſaid by lord *Mansfield*, that an unforeſeen ſeparation is an accident to which the underwriter is liable. And the firſt deciſion upon this ſubject was ſuch, that it never has been departed from in any one inſtance.

Assumsit on a policy of insurance, made in the usual form, "from *London* to *Cadiz*, warranted to depart with convoy." Upon the general issue pleaded, the jury found a *special* verdict; stating, that the ship did depart from the port of *London* in company of the convoy intended, and sailed together as far as the *Isle of Wight*, in pursuance of the voyage towards *Cadiz*, and there they were separated by stress of weather; that the convoy put into *Torbay*, and the insured ship into the port of *Fowey* in *Cornwall*: That three days afterwards the wind setting right to bring the convoy down the channel, the master of the insured ship sailed out of *Fowey*, on purpose to meet the convoy; but it did not come: And then the insured ship was seized with another storm, so that she could not return from whence she came, but was driven upon the *French* coast, and there taken by the enemy. *Jeffery* v. *Legendra*, 3 *Lev.* 320. 2 *Salk.* 443. *Carthew*, 216. 1 *Show.* 320. 4 *Mod.* 58. S. C.

After several arguments on this special verdict, the plaintiff had judgment, *per totam curiam*, for the whole loss; and the principal reason was, because there was no manner of neglect, or other default, found in the master of the ship; but it appeared he had done all in his power to keep in company of the convoy. It is found expressly, that he departed with convoy from his first port, which answers the words of the policy: But it would have been otherwise, if any fraud or neglect had been found in the master of the insured ship after her departure, notwithstanding he departed out of the first port with convoy; for the meaning of the words, "*warranted to depart with convoy*," is, that the insured ship should keep company with the convoy during the whole voyage, if possible.

Even where the ship has by tempestuous weather, been prevented from joining the convoy at all, at least of receiving the orders of the commander of the ships of war, if she do every thing in her power to effect it, it shall be deemed a sailing with convoy, within the terms of the warranty. *Park.*

The plaintiff had insured on goods in the *John* and *Jane*, from *Gottenburgh* to *London*, with a warranty to depart with convoy from *Fleckery*. In *July*, 1744, the ship sailed from *Gottenburgh* to *Fleckery*, and there she waited for convoy two months. On the 21st of *September*, at nine in the morning, three men of war, who had one hundred merchant-ships in convoy, stood off *Fleckery*, and made a signal for the ships there to come out, and likewise sent in a yawl to order them out. There were fourteen ships waiting, and the *John* and *Jane* got out by twelve o'clock, and one of the first; the convoy having sailed gently on, and being two leagues a-head. It was a hard gale; and by six in the afternoon, the ship came up with the fleet; but could not get to either of the men of war for sailing orders. It was stormy all night, and at day-break the ship in question was in the middle of the fleet; but the weather was so bad, that no boat could be sent for sailing orders. A *French* privateer had sailed amongst them all night, and, it being foggy on the 22d, attacked the *John* and *Jane* about two, who kept a running fight till dark, which was renewed the next morning, when she was taken. For the defendant the underwriter, it was insisted, that this ship was never under convoy, nor are ships ever considered so, till they have received sailing orders; and, if the weather would not permit the captain to get them, he should have gone back. *Victorina* v. *Cleeve*, 2 *Stran.* 1250.

But the chief justice Sir *William Lee* and the jury were of opinion, that, as the captain had done every thing in his power, "it was a departing with convoy:" And those agreements are never confined to precise words; as in the case of departing with convoy from *London*, when the place of rendezvous is *Spithead*, a loss in going thither is within the policy. Verdict for the plaintiff.

The plaintiff having underwrote the *William* and *Anne*, captain *Strachan*, at and from *Virginia* or *Maryland* to *London*, had a mind to re-insure himself, and accordingly ordered Mr. *Alexander Hoskins*, a broker, to get it done; who having complied with the commission, certified on the policy, that the interest was in the plaintiff. *Hewit* v. *Flexney*, at *Guildhall*, the sittings after *Easter* term, 1746.

The insurance was made, *interest or no interest*, free of average, and without benefit of salvage; but under the policy was this clause, *in case of retain, the assurers to have benefit of salvage, and pay average, the same as if wrote on interest.*

The ship sailed from *Virginia* on her voyage to *London*; and being about two hundred and fifteen leagues to the westward of Cape *Clear*, after a voyage of three weeks, she

ſhe was taken by two *French* privateers, and carried into a place in *Newfoundland*, called by that nation *Cape de Grate*, and commonly occupied by them in the fiſhing ſeaſon, where ſhe continued in the enemy's poſſeſſion and power forty-one days; during which time, the enemy took out of her a great part of her cargo; and after ſo rifling her, and in their way condemning her, the captain agreed to ranſom her with what remained of her lading; and the ranſom-bill being ſigned, and his mate left as an hoſtage, they permitted him to purſue his voyage to *London*, where he afterwards arrived.

Soon after the ſhip's arrival, the merchants who were concerned in the cargo, and had been inſured, applied to their underwriters for ſatisfaction; when moſt of them ſettled the average, for what was pillaged, at fifty *per cent.* one at forty, and the preſent plaintiff paid his quota thereon, and afterwards applied to the defendant, who had re-inſured him, to ſettle his policy; and it was agreed between them, that it ſhould be on the ſame footing as the major part of the aforeſaid underwriters on intereſt had done, which the broker, in this inſurance, underſtanding was done at fifty *per cent.* he endorſed on the back of the policy theſe words,

"*Adjuſted this loſs at fifty pounds* per cent. *to pay in one month*, London, 12 December, 1745; and ſigned by the defendant,

Daniel Flexney."

Though at the time the defendant ſigned the above-mentioned note, he told the plaintiff, that ſome of the underwriters, on the original policies, had paid an average only of forty *per cent.* and therefore he would pay no more; and at the ſame time, with his pen drew a line through the word fifty, and above it wrote forty, which occaſioned ſome diſpute between them; but the indorſement ſo ſigned by the defendant remained uncancelled.

The defendant afterwards refuſed making any ſatisfaction, under a ſuppoſition of his having no obligation thereto, for which his principal reaſons were, viz.

1ſt, That although he had ſigned ſuch an adjuſtment at forty *per cent.* yet he is not bound by it, becauſe the plaintiff objected to it at the time of ſigning, and inſiſted on fifty.

2dly, That although the ſhip was in the enemy's poſſeſſion, and carried into *Cape de Grate*, yet ſhe afterwards proceeded on the ſame voyage, and arrived ſafe in *London*, therefore there could be no loſs, ſo as to recover under a policy *intereſt or no intereſt*.

To the firſt of which objections, the plaintiff admits that he did find fault with the defendant for ſtriking out the word fifty, and inſerting forty, yet as the defendant did not then think proper to cancel the ſaid adjuſtment, but permitted it to remain on the back of the policy, the plaintiff apprehended he had a right to recover under the ſaid adjuſtment.

As to the defendant's ſecond objection, the plaintiff ſuppoſes, that as the ſhip was carried in by the enemy to *Cape de Grate*, and detained till ranſomed, that this will amount to a total diveſtiture or alteration of the property, and be deemed ſuch a loſs as will entitle him to recover; this caſe ſeeming to be of a quite different nature from a re-capture before the ſhip is carried into an enemy's port.

Verdict for the plaintiff.

The plaintiff having cauſed himſelf to be inſured 50l. *intereſt or no intereſt free of average, and without benefit of ſalvage*, on the *Proſperous Eſther*, captain *Miln*, from and immediately following her laſt arrival at *Maryland* or *Virginia*, and to continue till her arrival at *London*; and not caring to appear in it, he directed his broker, Mr. *Hart*, to get the policy made in his name, which was accordingly done, and as ſhe was deemed a miſſing ſhip, the premium was after the rate of ſixty guineas *per cent.* *Barclay* v. *Etheringtone*, ſittings after *Trin.* term, 1747, at *Guildhall*.

The ſhip ſailed on her voyage from *Virginia*, and in forty days after was taken by a *French* privateer, about a hundred leagues to the weſtward of the land's end, and was detained by the enemy ſix days at ſea, and then both ſhip and cargo ranſomed for 3500l. but captain *Miln*, inſtead of coming directly to *London*, where he was bound, on pretence of bad weather, put into *Ilfracomb* in *Devonſhire*, from whence he wrote to his

owner, Mr. *Dick*, of *London*; but the ſaid gentleman's affairs being then unhappily ſituated, and he having, prior to his misfortunes, aſſigned the ſhip and two policies of inſurance thereon to Mr. *Alexander Black*, who apprehending by what captain *Miln* wrote, that the ſhip and cargo was much damaged ſince the capture, and therefore that the value might fall ſhort of a ſufficiency to pay the ranſom bill, and incident charges, he rather choſe to come upon the inſurers for his money, than to have the trouble of taking the ſhip and cargo under his care, and therefore abandoned the whole to captain *Miln*, to enable him to pay the ranſom bill.

And thereupon Meſſ. *Simonds* of *London*, merchants, agents for the captors, ordered captain *Miln* to carry the ſhip and cargo to *Briſtol*, there to be diſpoſed of, inſtead of bringing her to *London*, which was accordingly done; and after paying the captain and ſailors their wages, amounting to upwards of 300l. the nett proceeds fell ſhort of the ranſom bill, owing to the damage ſhe received in her voyage after the capture.

The defendant ſuppoſes this was a gaming policy, though the plaintiff inſiſts upon its being a re-inſurance; and having applied to the defendant, after underwriting, for his conſent to have it declared ſo, he abſolutely refuſed to admit it.

The plaintiff ſeemed to lay a good deal of ſtreſs on a ſuppoſed indiſcretion in the captain, by paying more for the ſhip and cargo than they were worth; but had they eſcaped the damages ſubſequent to the ranſom, they would undoubtedly have ſold for more than they coſt freeing, and never have been abandoned by the owners.

The plaintiff likewiſe inſiſts, that the ſhip ſailed from *Virginia*, but never arrived at *London*, according to the terms of the policy, and therefore the inſurance was due; but the defendant, in reply, pretends, that the ſhip's putting into *Ilfracomb*, was a deviation, and conſequently not within the riſk of the policy; and beſides, he thinks this is not to be conſidered as a total loſs, in the caſe of *intereſt or no intereſt*, as it is a mere wager, whether the ſhip arrives or not; the ſhip did arrive in *England*, and is now in being, and this was a ranſom at ſea, only for the benefit of the concerned, but the defendant could reap no advantage by it, whether it was prudently done or not; and it might occaſionally have been more for his intereſt, if the ſhip had continued at ſea in the enemy's poſſeſſion, as there was a chance of her being re-taken, before ſhe had been carried *infrà præſidia*, and if ſhe had, and arrived ſafe, there would have been no loſs within the terms of the policy; as he preſumes there is no room to claim a loſs in caſes of a re-capture: Several merchants, inſurers, and brokers, being of opinion that on a policy, *intereſt or no intereſt*, a capture at ſea is never conſidered as a total loſs, unleſs the prize is afterwards carried into the enemy's port, and that the abandoning the ſhip and cargo by the owners, after her arrival, will not alter the caſe.

The jury found a verdict for the plaintiff.

The *Broomfield* was inſured, at and from the *Leeward Iſlands* to *Briſtol*, *intereſt or no intereſt*, *free of average loſs*, *and without benefit of ſalvage*, and among other underwriters, the defendant ſubſcribed; the ſhip in her paſſage home was taken by a *Spaniard*, who took out four of her men and the captain, and put nine of his men aboard, and ordered them to carry her to *Bilboa*, for which place her courſe was directed; and on her voyage there, after having been in poſſeſſion of the enemy thirty-nine hours, ſhe was retaken by the *Terrible* privateer belonging to *Liverpool*, and carried into *Waterford*, from whence ſome propoſals were made to the owners of the *Terrible*, in order to her releaſe and permiſſion to proſecute her intended voyage to *Briſtol*; but not being agreed to, ſhe was brought to *Liverpool*, and after a commiſſion of appraiſement had iſſued out of the admiralty, ſhe and her cargo were ſold, to pay the ſalvage due to the re-captors, as by act of parliament. *Daubony* v. *Read*, ſittings after *Mich.* term, 1750, at *Guildhall*.

One of her quondam owners now bought the whole, and afterwards parcelled her out among ſeveral gentlemen at *Briſtol*, who became copartners with him, to which place ſhe was ordered, and where ſhe arrived; though, as the plaintiff ſuppoſes this could not be an arrival agreeable to, or within the intent and meaning of the policy in queſtion, under the circumſtances above ſtated, *viz.* of her capture, re-capture, appraiſement,

praiſement, and ſale, and with an entire new ſet of owners, he thinks he is entitled to a total loſs.

The defendant, on the contrary, urges that this was no more than a bare capture and re-capture, which he ſays has never been deemed a total loſs; in reply to which the plaintiff affirms, that this was ſtill more, for the ſhip after being retaken, was carried into *Waterford* by the privateer, kept ſome conſiderable time there, afterwards was carried into *Liverpool*, and there, as above-mentioned, with the cargo, appraiſed and ſold to pay the ſalvage, and a new ſet of owners engaged before ſhe ſet out for *Briſtol*, by which the whole voyage was altered and loſt.

And to juſtify this plea, he quoted my lord chief juſtice *Lee*'s ſentiments, when he gave judgment in the caſe of the *Salamander*, viz.

" We muſt not judge this cauſe by the rules of the *civil law*, but we muſt judge it " by the rules of the *common law*, and determine on this policy as an agreement and " contract between the parties, whoſe intention and meaning, when they enter into it, " muſt govern; and although in the *civil law*, to make a forfeiture of an inſurance there " muſt be a total loſs of property, that is not a reaſon why it ſhould be required in " this caſe, becauſe here the policy by the words of it extends to *accident*, where there " may be no loſs of property, as taken by pirates, enemies, men of war, *&c.* And " this his lordſhip declared, as taken notice of by lord *King*, in the caſe of *De Paiba* " and *Ludlow*, where there was no alteration of property by that of capture, as " *Sweden* was not at war with *England*, and yet that was deemed a total loſs; but in " the preſent caſe, here was a capture by an enemy; and his lordſhip further ſaid, that " the queſtion on the *Salamander*, was not, whether the property of the privateer was " loſt by this capture, but whether the capture was ſuch a peril as is inſured againſt? " The judges were unanimouſly of that opinion, and judgment was given for the " plaintiff."

Verdict for the defendant.

This action was brought by the plaintiff againſt the defendant, on a policy of inſurance, which the latter underwrote ſo long ago as in *November*, 1743, on the ſhip *George* and *Henry*, captain *Bower*, at and from *Jamaica* to *London*, *intereſt or no intereſt*, *free of average*, *and without benefit of ſalvage to the inſurers*, with a warranty annexed to the policy, *viz. warranted the ſaid ſhip to ſail from* Jamaica, *with the fleet that came out under convoy of the* Ludlow-Caſtle *man of war*. *Hog.* v. *Gouldney*. Sittings after *Trinity* term, 1745, at *Guildhall*.

The ſaid ſhip did ſail accordingly, with the fleet under the aforeſaid convoy; but in a great ſtorm that happened ſome time after their ſailing, wherein many ſhips were loſt, the *George* and *Henry* received ſo much damage as obliged her to bear away for *Charles Town* in *South Carolina*, where ſhe put in, and upon examination, was found quite unfit to put to ſea again; whereupon her cargo was taken out and laden aboard other ſhips for *London*, and ſhe condemned and broke up.

In conſequence of which the plaintiff demanded his inſurance; and all the underwriters, being ſatisfied of the truth of the aforementioned facts, paid their loſs, except the defendant, who went ſo far as to ſettle it, and according to cuſtom, underwrote the policy in the following words and figures,

" *Adjuſted the loſs on this policy, at ninety-eight pounds* per cent. *which I do agree to pay one month after date*, London, 5 *July*, 1745.

Henry Gouldney."

When this note became due, he thought himſelf no way bound by it, but inſiſted on fuller proof; particularly of the ſhip's ſailing under convoy, as warranted, and of her condemnation at *Carolina*; but it having been always the cuſtom that after ſuch adjuſtments as above, with promiſe of payment at a certain day, are made between the aſſured and inſurer, no further evidence is ever required, but the loſs conſtantly paid; it was upon this account that *The jury found a verdict for the plaintiff.*

And my lord chief juſtice, conſidering it as a note of hand, declared that the plaintiff had no occaſion to enter into the proof of the loſs.

The

The *Tiger*, captain *Harriſon*, being bound from *London* to *Gibraltar*, the plaintiff got an inſurance made on her, intereſt or no intereſt, free of average, and without benefit of ſalvage to the inſurers; and at the foot of the policy there was a warranty, *that the ſhip ſhould depart with convoy, from ſome port in the channel.* *Arnold* v. *Godin.* Sittings after *Trinity* term, 1747, at *Guildhall.*

The ſaid ſhip proceeded on her voyage as far as the *Downs*, and ſailed from thence under convoy, as warranted; but ſoon after her departure ſhe received a very conſiderable damage, which obliged her to return to *Dover Pier* to refit; and after the neceſſary repairs were finiſhed, ſhe ſailed again, in proſecution of her voyage, and for her ſecurity therein, to join the convoy at *Spithead*; but having got as far as the *Iſle of Wight*, ſhe proved ſo leaky as obliged her to a ſecond return, and ſhe once more arrived at *Dover*, to ſearch for her leaks.

Her owners, on this, thought it adviſeable to have her ſurveyed by men of ſkill and judgment, and thereupon two ſhip carpenters, and two maſters of ſhips having examined her, declared that they had ſurveyed both ſides from ſtem to ſtern above the wales, and the tranſom, after the planks were ripped off, and found the timbers to be very rotten, and in ſo bad a condition that except all her upper works were pulled down and new built, they did not judge her in a fit condition to proceed on her intended voyage; and that if ſhe was ſo repaired, the charges would come to more than ſhe would be worth, with all belonging to her.

The plaintiff inſiſts that ſhe was a very good ſhip when ſhe ſet out on her voyage, and ſhe was only rendered otherwiſe by the bad weather ſhe had met with, which at laſt not only rendered her unfit for her voyage, but occaſioned her proving a total loſs to the owners; that ſhe would have weathered the ſtorm, in all probability, unhurt, had not the *Swift* privateer drove foul of her; that when her firſt hurt was repaired, the builder ſuppoſed her ſtronger than before the ſtorm; though when ſhe was laid open, her tranſom, as before-mentioned, and moſt of her long timbers were found rotten, ſo that notwithſtanding it is poſſible ſhe might have performed her voyage, yet had her defects been known, no body would have cared to venture in her.

Mr. *Burton*, who fitted her out in the *Thames*, declares ſhe was in very good condition, and fit for any voyage; though he did not examine her timbers, but only caulked her, and mended her outſide and floor timbers; but it is natural to ſuppoſe, that if her timbers were ſound in *October*, when theſe repairs were done, they could not have been rotten in *January*, when ſhe received her damage.

And the defendant grounds his reaſons for not paying the ſaid inſurance, firſt, on that part of the policy's contents, which aſſerts the ſhip to be *tight, ſtaunch, and ſtrong*, and, barring future accidents, able to go through the voyage; whereas he ſuppoſes this veſſel not to have been ſo, as he thinks is clear, from the preceding affidavit, and from the verbal evidence of one of the ſurveyors; to which he adds, in order to make the proof of her defects the ſtronger, that on her firſt ſetting out ſhe belonged to two *Jews*, who, on her return to *Dover Pier* the firſt time, ſold her to Mr. *Richard Glover*, a conſiderable merchant of this city, who ordered her to be repaired, and actually laid out upon her 150*l.* though as it appears, it was in a manner thrown away, as on her ſecond return ſhe was condemned, broke up, and ſold in parcels; and her incapacity to proceed on her voyage having been ſo apparent, from the foregoing ſurvey as to induce Mr. *Glover* to deſire the ſhippers to take their goods out, and though he had got 300*l.* inſured on her, he ſeemed ſo ſenſible of the deceitful bargain with the *Jews*, in ſelling him an old rotten ſhip, that he never demanded one farthing of the ſaid inſurance from the underwriters.

That the plaintiff had no intereſt in the veſſel, and therefore this was only a gaming policy; and as it is a general rule in all caſes of *intereſt or no intereſt*, that there muſt be total loſs before the inſured can recover, and the inſurer by this policy being free from average, or a partial loſs, it ſeems to be the principal queſtion in this caſe, whether the ſhip brought into *Dover Pier*, there condemned as being rotten, divided into lots, and ſold, will be conſidered in the agreement or wager, as a total loſs? And to enforce to the contrary, the defendant remarks, that there was no loſs at ſea, no capture, but a deliberate act done by the owner, upon a regular ſurvey, which occaſioned her being broke up, not by reaſon of the damage ſhe had received, but from the rottenneſs of the principal parts of her works. *Verdict for the plaintiff.*

Agreeably

Agreeably to this deciſion, *earl Mansfield* in delivering his opinion, in a late caſe concerning neutral property, by way of illuſtration of his argument, referred to a ſimilar point of law; the queſtion being, whether the ſhip warranted in the policy, to be neutral property, is deemed to be continued ſo during the whole voyage. Which was determined in the negative. "So, added his lordſhip, by an implied warranty every ſhip muſt be *tight*, *ſtaunch* and *ſtrong*; but it is ſufficient if ſhe be ſo at the time of her ſailing. She may ceaſe to be ſo in twenty-four hours after her departure, and yet the underwriters will ſtill continue liable. The warranty is that things ſtand ſo at the time, not that they ſhall continue."

The plaintiffs having received orders from Mr. *John Jones*, of *Boſton* in *New-England*, to make ſome inſurance for him on the *Repriſal*, captain *Gowen*, and alſo on her goods and freight, at and from cape *Fare*, in *North Carolina*, to *Briſtol*; underneath the policy for the ſhip only was inſerted the ſubſequent words or declaration, *viz. The following inſurance is on the ſhip only, valued at the ſum inſured*, on which part the defendant underwrote 100*l*. *Lane* and *Caſwall* v. *Jon. Collyer*, jun. Sittings after *Hil.* term, 1745, at *Guildhall*.

The ſhip ſailed from Cape *Fare*, with a cargo of pitch, tar, *&c.* in proſecution of her voyage for *Briſtol*, and got within one hundred and fifty leagues to the weſtward of Cape *Clear* in *Ireland*, where ſhe was attacked and taken by three *French* ſhips, bound for *Newfoundland*, where they carried her and her cargo to a *French* port, called *Carpoon*, after having firſt taken out all her men, and diſperſed them aboard their own ſhips.

On their arrival at the aforeſaid port, the captors took out all her pitch, being two hundred and three barrels, ſome tar, what rice was aboard, *&c.* and after detaining her about three or four weeks in the ſaid port, the captors offered captain *Gowen* his ſhip, and remaining cargo, for 9,500 livres, about 425*l.* ſterling, which he accepted, and became the purchaſer thereof on thoſe terms, leaving his ſon as an hoſtage for the payment of the ranſom.

The ſhip departed from *Carpoon* for *Briſtol*, and on her voyage met with very bad weather, which broke her rudder, and was forced to put into *Appledore* in *Devonſhire*, the firſt port they could make with ſafety; where the captain, firſt and ſecond mates, boatſwain, and a foremaſt-man, made a proteſt on their oaths, giving ſuch an account as the preceding.

The captain having purchaſed the ſhip and cargo, as before-mentioned, on his arrival at *Appledore* applied to Mr. *Perkins* of *Briſtol*, to whom he was conſigned by *Jones*, the owner, who refuſed to pay the ranſom-money, or have any thing to do with ſhip or cargo; and then the captain came to *London* to the inſurers; and thoſe on the goods impowered and deſired him to ſell the cargo for what he could, in order, that, if it produced more than the ranſom, they might have the benefit; but the inſurers on the ſhip would not intermeddle, or give any direction about it.

The captain returned to the ſhip, and ſold that and the cargo jointly, for above 100*l.* leſs than the redemption-money, after deducting charges; and he has been obliged to pay, or give ſecurity for the remainder, to procure his ſon's liberty.

The ſhip being thus taken and carried into an enemy's port, where ſhe was detained a conſiderable time, and had great part of her cargo taken out by the captors, and afterwards meeting with other misfortunes, occaſioned her producing leſs than the ranſom-money, and conſequently to prove a total loſs, to be made good by the inſurer.

The preceding is a ſtate of the caſe, and of the plaintiffs demands, who think themſelves entitled to a total loſs, as the policy was valued; but the defendant, on the contrary, pretends that, as part both of the ſhip and goods were ſaved, he is entitled to an average, and not ſubject to an entire loſs; but

The jury found a verdict for the plaintiffs.

The plaintiff made an inſurance in *London*, on the *Tryal* privateer, fitted out at *Briſtol*, for two calendar months, where the ſhip might then be, on a cruiſe, or in any port or place whatſoever or whereſoever; the ſaid ſhip to be valued at *intereſt or no intereſt, free of average, and without benefit of ſalvage*. *Jenkins* v. *Mackenzie*. Sittings after *Mich.* term, 1749, at *Guildhall*.

The ſaid privateer being fitted for a cruize, ſailed from *Briſtol* on the 29th of *May*, 1746; and ſome days after ſhe was met by a *French* privateer of a ſuperior force, who attacked, and after a brave defence, took her.

She

She had been in the enemy's hands about eight hours, without their removing any of her men or ſtores, when admiral *Martin*, with his whole fleet, appearing, retook the *Tryal*; and hearing of the gallant behaviour both of the captain and crew, they unanimouſly agreed to give up their ſalvage to them, and accordingly drew up and ſigned an inſtrument for that purpoſe; and the admiral ordered her to be furniſhed with all neceſſaries, and ſent a man of war ſloop to ſee her ſafe into *Briſtol*, where ſhe arrived the latter end of *June*, being between three or four weeks before the inſurance expired.

Theſe circumſtances, the plaintiff thinks, entitles him to a total loſs, as the voyage was overſet, and the policy being on *intereſt or not*, will admit of no average.

The defendant agrees to the laſt aſſertion; but, for that very reaſon inſiſts, he has no loſs to pay, as he is free from a partial one, and there can be no total one where the ſhip is arrived, and, as he inſiſts, might have been fitted out again before the limited term of the two months expired, had the owners not determined the contrary; and beſides, though the ſhip was taken, yet as ſhe was never carried *infrà præſidia* of the enemy, or was ſo taken as to be beyond a poſſibility of a re-capture, and having returned to *Briſtol* ſo long time before the two months expired as was ſufficient to refit her in, the defendant ſuppoſes that the neglect of the owners ought not to be imputed to the underwriters, more eſpecially as ſeveral ſhip-builders attended to prove there was time enough, as ſeveral merchants did to give their opinion with regard to the loſs.

Verdict for the plaintiff.

The plaintiff was owner of the ſhip *Love and Unity*, which he let out to freight to one *Bateman Humphrys*, for a voyage to *Liſbon* and back again; and the freighter was by charter-party obliged to victual and man her, which he did accordingly, putting in the maſter and crew, and, embarking himſelf, proceeded on his voyage, and arrived ſafe at *Liſbon:* He delivered the outward-bound cargo, and put the ſhip up for *London*, in hopes of getting a freight home; on advice of which, the owner and plaintiff got her inſured, *at and from* Liſbon *to* Graveſend, *warranted to ſail with the convoy*. *Boutflower* v. *Wilmer*. Sittings after *Hil.* term, 1747, at *Guildhall.*

The freighter, being at *Liſbon*, meditated a fraud; which iniquitous ſcheme he perpetrated in the following manner, *viz* He made up rolls of lead about the ſize of moidores, ſix and thirties, and three pound twelves, packed up, and ſealed, as ſuch monies are uſually packed up and ſealed, and made packages likewiſe in imitation of thoſe of diamonds, and then ſent them on board. He took bills of lading from the captain, as for real money and diamonds, ſent thoſe bills of lading home to different merchants, and drew conſiderable ſums upon the credit of them, as well as made large inſurance, in order, as is ſuppoſed, to have loſt the ſhip in the voyage home, and make the inſurers pay as though ſuch effects had actually been on board; but the captain, as it is imagined, ſuſpecting ſomething of the fraud before the ſhip ſailed, opened one or more of the packages, and diſcovered the cheat, finding nothing but lead and glaſs, inſtead of gold and diamonds; of which he giving information to the *Engliſh* conſul there, the freighter ran away, and the captain and crew left the ſhip, the captain coming to *England.*

The plaintiff, on knowing what had occurred, by the maſter's arrival, immediately applied to the inſurers, and deſired them to ſend to *Liſbon* for the ſhip, or furniſh him with money to go and fetch her; but they were of opinion, and accordingly acquainted him ſo, that as the ſhip was at the port ſhe was inſured from, and had not proceeded on her voyage, it was the buſineſs of the owner, not the inſurers, to find maſter and mariners to navigate her; the conſequence of which was, that the ſhip lay there neglected till ſhe was broke to pieces, whereupon the plaintiff brought this action for the recovery of a total loſs.

The defendant thinks himſelf not obliged, as he preſumes the words in the policy, *at and from*, can only mean to give the ſhip leave to ſtay at the port a reaſonable time to procure a lading, and take it in, and not to lie there till ſhe rots, without attempting the voyage; as this would be to make the inſurer at all events liable, ſooner or later, whereas he ſuppoſed he undertook a riſk of two or three months only.

Bat-

But, I preſume, the underwriters would be obliged by the barretry of the maſter and ſailors, as I imagine the act of deſerting the ſhip would be conſtrued, and therefore, abſtracted from all other arguments, would on this point only be condemned.

Verdict for the plaintiff.

The plaintiff in the preſent caſe brought an action againſt the defendant, for an inſurance this latter underwrote on the *Mediterranean*, at and from *Briſtol* to *Newfoundland*, the ſhip valued at the ſum inſured, without further proof of intereſt than the policy. *Elton* v. *Brogden*. Sittings after *Hilary* term, 1746, at *Guildhall*.

It appeared upon the trial of this cauſe, that the plaintiffs, who were merchants at *Briſtol*, were owners of the ſhip in queſtion, and had ſent her out upon a voyage from thence to *Newfoundland*; that ſhe carried with her a letter of marque, and in her voyage met and took a *French* ſhip, which ſhe brought back to *Briſtol*; that ſhe ſoon ſet out again upon the ſame voyage, and took another prize, which ſhe alſo returned with.

Upon the ſhip's coming back, the plaintiffs applied to the inſurers for a return of part of the premium, which was ten guineas *per cent.* in regard they had not run ſo much riſk as if the ſhip had proceeded the whole voyage, and the inſurers returned three *per cent.*

A new policy was made for the voyage now under conſideration, in the ſame manner and on the ſame terms as the laſt, and the ſhip ſet out on her voyage, and took another prize.—The captain, who was the plaintiff's only witneſs, ſaid, their directions to him for the preceding voyages were, that in caſe he took any thing to return with it to *Briſtol*, or not, as he ſhould think proper; but in this laſt voyage their directions were, if he took any thing, to ſend it home by part of the crew, and with the other part to proceed on the voyage; and that he would have done ſo, but the ſailors, after the capture, would not proceed on the voyage, but would return to take care of her to *Briſtol*; and that all the crew, except the mate, ſurgeon, and one other, were of this mind, and ſwore if the captain would not go back, they would not touch a rope, nor do the leaſt thing towards navigating the ſhip; on which the captain was forced to comply, and ſet his ſhip homeward, as guard or convoy to the prize; that in going back to *Briſtol*, the *Mediterranean* was taken, though the prize got in ſafe, and for this loſs the plaintiffs brought their action.

On the part of the defendant it was inſiſted, that this was a deviation for the benefit of the aſſured, and that the inſurers were therefore diſcharged.

It appeared on the captain's evidence, that the plaintiffs had given a part of all prizes to the captain and ſhip's crew; and that it was for the care and protection of this prize, which made the ſailors inſiſt to go back with her, which was the firſt cauſe and ground for the deviation, and therefore, and for that the plaintiffs were likewiſe themſelves to be greatly benefited by the prize, the defendant inſiſted he ſhould not pay.

But it appearing alſo from the evidence of the captain, that his orders for this voyage were poſitively to proceed, notwithſtanding any capture he ſhould make, and that he would have done ſo, if he could have prevailed on the ſailors, and that his returning was wholly owing to their refuſal to proceed, and his incapacity to go on without them, the lord chief juſtice and the jury were of opinion with the plaintiffs, and the jury brought in their verdict accordingly.

The plaintiff being part owner of the ſhip *Onſlow*, an *Eaſt-India* ſhip, then lying in the *Thames*, and bound on a voyage to *China*, and back again to *London*, inſured it at and from *London* to any ports and places beyond the *Cape* of *Good Hope*, and back to *London*; free from average under ten *per cent.* upon the body, tackle, apparel, ordnance, ammunition, artillery, boat, and other furniture of and in the ſaid ſhip: Beginning the adventure upon the ſaid ſhip, from and immediately following the date of the policy; and ſo to continue and endure until the ſaid ſhip, with all her ordnance, tackle, and apparel, ſhall arrive as above, and hath there moored at anchor twenty-four hours in good ſafety. And it ſhall be lawful for the ſaid ſhip, in this voyage, to proceed, and ſail to, and touch, and ſtay at any ports or places whatſoever, without prejudice to this aſſurance. The perils mentioned in the policy are the common perils, *viz.* of the ſeas, men of war, fire, enemies, pirates, *&c.* and all other perils, loſſes and misfor-

tunes. *Pelly* v. *Govern.* and *Comp.* of the *Royal Exch. Aſſur.* 1 *Burrow*, 341, at *Guildhall*, 23 *May*, 1757.

The ſhip ſailed, and arrived in the river *Canton* in *China*, where ſhe was to ſtay, to clean and refit, and for other purpoſes. Upon her arrival there, the ſails, yards, tackle, cables, rigging, apparel, and other furniture, were by the captain's order taken out of her, and put into a ware-houſe or ſtore-houſe, called a *Bank-Saul*, built for that purpoſe on a *Sand-Bank*, or ſmall *Iſland*, lying in the ſaid river, near one of the *Banks* called *Bank-Saul Iſland*, about 200 or 220 yards in length, and forty or fifty yards in breadth, in order to be there repaired, kept dry, and preſerved till the ſhip ſhould be keeled, cleaned, and refitted. Some time after this, a fire accidentally broke out in the *Bank Saul* belonging to a *Swediſh* ſhip, and communicated itſelf to another *Bank-Saul*, and from thence to the *Bank-Saul* belonging to the *Onſlow*, and conſumed the ſame, with all the ſails, yards, tackle, cables, rigging, apparel, and other furniture belonging to the *Onſlow*, which were therein.

The queſtion in this caſe was, Whether the inſurers were liable to anſwer for this loſs, ſo happening upon this *Bank-Saul*, within the intent and meaning of this policy? It was ſtated, that it was the univerſal and well-known uſage, and had been ſo for a great number of years, for all *European* ſhips which go a *China* voyage, when they arrive near this *Bank-Saul Iſland* in the river to unrig the ſhip, *&c.* and to act in every reſpect as captain *Pelly* had done; and that the ſo doing was prudent, and for the common benefit of the owners of the ſhip, the inſurers and inſured, and all perſons concerned in the ſafety of the ſhip. It was objected, that this was not a loſs by ſea, but at land. But it was anſwered, that the loſs being upon a ſand-bank in the river, and in the only port where the *Engliſh* can clean and refit their ſhips, it was a loſs at ſea, and the policy expreſſing an inſurance from fire, it was to all intents within the meaning thereof; and a verdict was given for the plaintiff, ſubject to the opinion of the court of *King's-Bench*; and lord *Mansfield* afterwards delivered the opinion of the court, confirming the ſaid verdict.

Of Re-Aſſurance and Double Inſurance.

RE-ASSURANCE, as underſtood by the law of *England*, may be ſaid to be a contract, which the firſt inſurer enters into, in order to relieve himſelf from thoſe riſks which he has incautiouſly undertaken; by throwing them upon other underwriters, who are called re-aſſurers. This ſpecies of contract has obtained a place in moſt of the commercial ſyſtems of the trading countries of *Europe*; and it is allowed by them, at this day, to be politick and legal: And the law of *England* adopted this regulation, and permitted the underwriters upon policies to inſure themſelves againſt thoſe riſks for which they had inadvertently engaged to indemnify the inſured; or where, perhaps, they had involved themſelves to a greater amount than their ability would enable them to diſcharge. But though ſuch a contract ſeems perfectly fair and reaſonable in itſelf, and might be productive of very beneficial conſequences to thoſe concerned in this important branch of trade, yet, like many other uſeful inſtitutions, it was ſo much abuſed, and turned to purpoſes ſo pernicious to a commercial nation, and ſo deſtructive to thoſe very benefits it was originally intended to promote and encourage, that the legiſlature was at laſt obliged to interpoſe, and by a poſitive law, to cut off all opportunity of practiſing thoſe frauds in future, which were become glaring and enormous.

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Accordingly it was enacted, That it ſhould not be lawful to make re aſſurance, unleſs the aſſurer ſhould be inſolvent, become a bankrupt, or die; in either of which caſes, ſuch aſſurer, his executors, adminiſtrators, or aſſigns, might make re-aſſurance, to the amount before by him aſſured, provided it ſhould be expreſſed in the policy to be a re-aſſurance. 19 *Geo.* II. C. 37. S 4.

From this act, ſays *Park*, it is apparent that all kinds of re-aſſurance are not prohibited; but wherever ſuch a contract tends to the advancement of commerce, or to the real benefit of an individual, in ſuch caſes it ſhall be permitted. Thus, in caſe of inſolvency or bankruptcy, it is advantageous to the creditors in general, as well as to the individual, that a re-aſſurance ſhould be made: For by theſe means, the fund of the bankrupt's eſtate is not diminiſhed in caſe of loſs, and the inſured has a better ſecurity for the payment of the amount of his damages, or at leaſt a proportion of it. If the inſurer die, it is no leſs neceſſary and beneficial to his ſucceſſors than it was in the former caſe of a bankruptcy; becauſe it will provide aſſets to ſatisfy the inſured, in caſe a loſs ſhould happen, and thus ſecure the eſtate of the deceaſed for the benefit of his heirs.

The ſtatute is worded in ſuch expreſs terms, excluding every ſpecies of re-aſſurance, except in the three inſtances of death, bankruptcy, or inſolvency, that a doubt, as it ſhould ſeem, could hardly be founded upon it. But as it was held, that the firſt clauſe prohibiting inſurance, *intereſt or no intereſt*, did not extend to foreign ſhips, ſo it was argued, that re-aſſurance made here on *the ſhips of foreigners* did not fall within the act. This point, therefore, came on to be conſidered by the court of *King's-Bench* in the year 1787, in the form of a ſpecial caſe; ſtating, that a re-aſſurance was made by the defendant on a *French veſſel*, firſt inſured by a *French underwriter* at *Marſeilles*, and who, at the time of ſubſcribing the ſecond policy, was ſolvent. The court were unanimouſly of opinion, that this policy of re-aſſurance was void; and that every re-aſſurance in this country, either by *Britiſh* ſubjects or foreigners, on *Britiſh* or foreign ſhips, is void by the ſtatute, unleſs the firſt *aſſurer be inſolvent, become a bankrupt, or die*. *Andree* v. *Fletcher*; 2 Term. Rep. 161.

But there is another kind of aſſurance, which is called *double inſurance*, and which has been not unfrequently confounded with re-aſſurance, by merchants and commercial writers; it is for this reaſon, that we ſhall ſtate the difference accurately in this place.

A *double inſurance* is, where the ſame man is to receive two ſums inſtead of one, or the ſame ſum twice over, for the ſame loſs, by reaſon of his having made *two* inſurances upon the ſame goods, or the ſame ſhip. The firſt diſtinction between theſe two contracts is, that a re-aſſurance is a contract made by the *firſt underwriter*, his executors or aſſigns, to ſecure himſelf, or his eſtate; whereas a double inſurance is entered into by the *inſured*. A re-aſſurance, except in the caſes provided for by the ſtatute, is abſolutely void: A double inſurance is not void; but ſtill the inſured ſhall recover only one ſatisfaction for his loſs. This requires explanation.

Where a man has made a double inſurance, he may recover his loſs, againſt which of the underwriters he pleaſes; but he can recover no more than the amount of his loſs. This depends upon the nature of inſurance, and the great principles of juſtice and good faith. An inſurance being merely a contract of *indemnity*, in caſe of loſs, it follows as a neceſſary conſequence, that a man ſhall not recover more than he has loſt, or receive ſatisfaction greater than the injury he has ſuſtained. It being thus ſettled, that the inſured ſhall recover but one ſatisfaction, and that in caſe of a double inſurance he may fix upon which of the underwriters he will for the payment of his loſs, it is a principle of natural juſtice, that the ſeveral inſurers ſhould all of them contribute, in their ſeveral proportions, to ſatisfy that loſs againſt which they have all inſured. Theſe principles have been fully declared to be law in ſeveral caſes.

Firſt, in the year 1763, it was ruled by lord *Mansfield*, chief juſtice, and agreed to be the courſe of practice, that upon a double inſurance, though the inſured is not intitled to two ſatisfactions, yet upon the firſt action he may recover the whole ſum inſured, and may leave the defendant therein, to recover a rateable ſatisfaction from the other inſurers. See 1 *Blackſtone's Reports*, p. 416.

Thus alſo it was determined in another cauſe at *Guildhall*, many years after. It was an action to recover on a policy of inſurance on a ſhip from *Newfoundland* to *Dominica*,

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and from thence to the port of diſcharge in the *Weſt Indies*. It was a valued policy on the ſhip and freight, and on the goods as intereſt ſhould appear. The ſhip ſailed from *St. John*'s the 17th of *December*, 1775, and the plaintiff declared as for a total loſs. The defendant underwrote for 200l and paid into court 124l. This ſum was paid on a ſuppoſition, that the underwriters on a former policy ſhould bear a ſhare of the loſs. The plaintiff had originally inſured at *Liverpool*, on a voyage from *Newfoundland* to *Barbadoes* and the *Leeward Iſlands*, with an exception of *American* captures: But the plaintiff afterwards, for the purpoſe of ſecuring himſelf againſt captures, and having altered the courſe of his voyage, made the preſent inſurance. The plaintiff inſiſted he was intitled to receive the full amount of his inſurance from the defendant, and not any part from the *Liverpool* underwriters, becauſe the voyage laſt inſured was different from that inſured at *Liverpool*. A verdict was given for the plaintiff for his full demand, with liberty for the defendant to bring an action againſt the *Liverpool* underwriters, if he thought fit. *Rogers* v. *Davis*; *Mich.* Sittings, 17 *Geo.* III. before lord *Mansfield*.

Accordingly in the *Eaſter* term following, an action was brought for money had and received to the uſe of the plaintiff, who was the defendant in the firſt cauſe, in order to recover a contribution for the loſs which he had been obliged to pay. The plaintiff had paid 200*l*. loſs, and 47*l*. coſts. The queſtion was, whether the *defendant*, one of the *Liverpool* underwriters of the firſt policy, was liable to contribute any thing, and what? It was inſiſted by the counſel for the defendant, that the inſurance in *London* was an illegal re-aſſurance; and therefore the plaintiff might have made a good defence on that ground, as *defendant* in the action brought againſt him; and, if ſo, he could not now recover againſt the preſent defendant. Lord *Mansfield* ſaid—"The queſtion ſeems to be, whether the inſured has not two ſecurities for the loſs that has happened; If ſo, can there be a doubt that he may bring his action againſt either? It is like the caſe of two common ſecurities for money, where, if all the money be recovered againſt one of them, he may recover a proportion from the other. Then, this would bring it to the queſtion, whether the ſecond inſurance is void as a re-aſſurance? But a re-aſſurance is a contract made by the inſurer to ſecure himſelf; *and this is only a double inſurance.*" Upon this direction, the jury found for the plaintiff.

Of Bottomry and Reſpondentia-Bonds, as connected with Caſes of Inſurance.

BOTTOMRY is a contract, by which the owner of a ſhip borrows money to enable him to carry on the voyage, and pledges the keel or *bottom* of the ſhip, as a ſecurity for the re-payment. If the ſhip be loſt, the lender alſo loſes his whole money; but if not, he ſhall receive his principal, and the ſtipulated intereſt, however it exceed the legal rate. Syſtem of Marine Laws.

When the loan is not made upon the veſſel, but upon the goods, then the borrower only is *perſonally* bound to anſwer the contract, who is ſaid to take up money at RESPONDENTIA. In this conſiſts the chief difference between *bottomry* and *reſpondentia*; in moſt other reſpects they are the ſame.

The *borrower*, on *reſpondentia*, can only inſure the ſurplus value of the goods, over and above the money borrowed.

The lender alone can make inſurance on the money lent.

Bottomry and *reſpondentia* may be inſured, provided it be ſpecified to be ſuch intereſt, in the policy.

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When a perſon inſures a *bottomry* intereſt, and recovers upon the bond, he cannot alſo recover upon the policy.

This was an action on the caſe, upon a policy of inſurance made on goods and merchandizes, laden or to be laden on board the good ſhip or veſſel called the *Denham*, whereof was maſter captain *William Tryon*, " at and from *Bengal*, to any ports or " places whatſoever in the *Eaſt-Indies*, until her ſafe arrival in *London*," which policy was underwritten by the defendant for 200*l.* for a premium of 10*l. per cent.* The plaintiff declared for a total loſs. The defendant pleaded the general iſſue. *Glover* v. *Black*, 3 *Burrow*, 1394. *Trin.* term, 3 *Geo.* III.

The cauſe came on to be tried at *Guildhall*, *London*, on the 1ſt of *December*, 1762, before lord *Mansfield*; it appeared in evidence, that the defendant underwrote the policy and received the premium as ſtated in the declaration; that before the underwriting of the policy, the plaintiff had lent to *William Tryon*, the maſter of the ſhip, upon the goods then laden and to be laden on board the ſaid ſhip, on account of the ſaid *William Tryon*, the ſum of 764*l.* on *reſpondentia*, for which a *reſpondentia-bond* was executed by captain *Tryon* and one *Joſeph Buſtol*, to the plaintiff.

The bond was in the common form; and recited, " That the above named *Alphonſus* " *Glover*, had, on the day of the date, lent and advanced to the above bounden " *William Tryon*, the ſum of 764*l.* upon the merchandizes and effects laden and to be " laden upon the account of the ſaid *William Tryon*, on board the good ſhip or veſſel " called the *Denham*, of the burthen of 499 tons or thereabouts, now in the river " *Thames*, whereof he the ſaid *William Tryon* is the commander." And the condition was, " that if the ſaid ſhip ſhould, with all convenient ſpeed, proceed and ſail from " and out of the ſaid river *Thames* on a voyage to any parts or places in the *Eaſt-Indies*, " *China*, *Perſia*, or elſewhere beyond the *Cape of Good Hope*, and from thence ſhould ſail " and return into the ſaid river *Thames* at or before the end or expiration of thirty-ſix " calendar months to be accounted from the day of the date of theſe preſents, and that, " without deviation, the dangers and caſualties of the ſeas excepted; and if the above " bound *William Tryon* and *Joſeph Buſtol*, or either of them, their or either of their heirs, " executors, or adminiſtrators ſhould, within thirty days next after the ſaid ſhip or " veſſel ſhould be arrived in the ſaid river *Thames* from the ſaid voyage, or at the end " and expiration of the ſaid thirty-ſix calendar months, to be accounted as aforeſaid, " which of the ſaid times ſhould firſt or next happen, well and truly pay, or cauſe to " be paid, unto the ſaid *Alphonſus Glover*, his executors, adminiſtrators, or aſſigns, the " ſum of 1008*l.* and 9*s.* of lawful money of *Great-Britain*, together with 12*l.* and 4*s.* " of like lawful money by the month, and ſo in proportion for a greater or leſſer time " than a month, for all ſuch time and ſo many months as ſhould be elapſed and run " out of the ſaid thirty-ſix months, over and above twenty months to be accounted " from the date of theſe preſents; or if in the ſaid voyage, and within the ſaid thirty-" ſix months to be accounted as aforeſaid, an utter loſs of the ſaid ſhip by fire, ene-" mies, men of war, or any other caſualty ſhould unavoidably happen; and the ſaid " *William Tryon* and *Joſeph Buſtol*, or either of them, their or either of their heirs, exe-" cutors, or adminiſtrators, ſhould, within thirty-ſix calendar months next after ſuch " loſs, pay and ſatisfy unto the ſaid *Alphonſus Glover*, his executors, adminiſtrators or " aſſigns, a juſt and proportionable average on all goods and effects of the ſaid *William* " *Tryon*, carried from *England* on board the ſaid ſhip, and on all other goods and effects " which the ſaid *William Tryon* ſhould acquire during the ſaid voyage, and ſhould " not be unavoidably loſt, then the above-written obligation to be void, or elſe to be " and ſtand in full force, virtue and effect." That on the 31ſt of *March*, 1760, the ſaid ſhip *Denham* was at *Fort Marlborough* in the *Eaſt Indies*, within the limits inſured; ſaid had there and at the time of the loſs hereafter-mentioned, divers goods and merchandizes on board her, which were the property of the ſaid *William Tryon*, and of greater value than all the money he had borrowed. That on the ſaid 31ſt *March*, 1760, the ſaid ſhip, with her lading on board her, was burnt at *Fort Marlborough* aforeſaid; and thereby all the goods and merchandizes aforeſaid of the ſaid *William Tryon* were totally conſumed and loſt.

This proof being given of the plaintiff's intereſt, the jury found a verdict for the plaintiff, ſubject to the opinion of the court, " Whether, on this evidence, the plaintiff is intitled to recover on this policy?" For by the ſtat. of 15 *Geo.* II. c. 37. ſect. 5.

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it is enacted, " that all money to be lent on *bottomree*, or at *reſpondentia*, upon any ſhips " belonging to any of his majeſty's ſubjects bound to or from the *Eaſt-Indies*, ſhall be " lent only on the ſhip, or on the merchandizes or effects on board of ſuch ſhip; and " ſhall be ſo expreſſed in the bond. And the benefit of ſalvage ſhall be allowed to the " lender, his agents or aſſigns; who alone ſhall have a right to make aſſurance on the " money ſo lent. And no borrower of money on *bottomree* or at *reſpondentia* ſhall re- " cover more on any aſſurance than the value of his intereſt on the ſhip, or in the " merchandizes, or effects on board, excluſive of the money ſo borrowed. And in " caſe it ſhall appear that the value of his ſhare in the ſhip, or in the effects on board, " doth not amount to the full ſum or ſums he hath borrowed, ſuch borrower ſhall be " reſponſible to the lender for ſo much of the money borrowed, as he hath not laid " out in the ſhip, or merchandizes laden thereon, with lawful intereſt for the ſame, " together with the aſſurance and all other charges thereon, in the proportion the money " not laid out ſhall be to the whole money lent; notwithſtanding the ſhip and mer- " chandizes be totally loſt."

The counſel for the defendant inſiſted, that the lender of the money upon *reſpondentia* has no intereſt at all in the goods that the borrower either carries out, or may acquire in *India*, and conſequently he cannot inſure them. This was in anſwer to the counſel for the plaintiff, who maintained, that the lender of this money had an intereſt in the goods, though they were the property of the borrower: The lender is the trader againſt the riſk of the ſea. *Reſpondentia*, they ſaid is an intereſt that may be inſured, and it is not neceſſary to ſpecify in the policy, that it was a *reſpondentia* intereſt only, which is in- ſured. But to this it was objected, on behalf of the defendant, that there is a ſettled known form of inſuring the *reſpondentia* and the *bottomry* intereſt *ſpecifically* and *nominatim*. And the cuſtom of all inſurances is to mention the thing inſured preciſely. The queſ- tion therefore ultimately turned upon this point—whether the words *reſpondentia* and *bottomry* muſt be mentioned and ſpecified in the policy of inſurance? And the court de- clared that the words ought to be inſerted, it being the eſtabliſhed law and cuſtom of merchants—and lord *Mansfield* owned that at the trial, and alſo ſince, upon the argu- ments before the court, he did lean to ſupport this inſurance. And his reaſon for ſo doing, was, that he was ſatisfied of its being a fair inſurance, and that the doubt which had ariſen upon it was only occaſioned by a ſlip in omitting to ſpecify, as it was intended to have been done, " that this was a *reſpondentia* intereſt." This ſlip however could not be rectified, for the court after taking ſome time to conſider the caſe, non- ſuited the plaintiff ſolely for the omiſſion. This caſe being thereby rendered highly intereſting to caution merchants in reſpect to the careful wording of policies, we having given the ſubſtance, and for the entire arguments of the eminent counſel con- cerned on both ſides, we refer the gentlemen of the law, or merchants having ſimilar caſes at iſſue, to *Parker*'s Laws of ſhipping and *Inſurance*, *with a Digeſt of adjudged Caſes*, *4to. Lond.* 1775.

There were nine caſes in all, upon the ſeveral inſurances of the *Eaſt-India* ſhip the *Winchelſea*, captain *Howe* commander; they had been tried by ſpecial juries at different times; the charter-party, bearing date the 20th of *Auguſt* 1761, was according to a printed form which had been long in uſe, in which, among many other proviſions, a ſtipulation was made for 20*l.* 3*s.* 4*d.* a day, *demurrage*, for ſo long a time as ſhe ſhall be detained in *India*, *China*, or elſewhere within the ſaid limits, in the ſervice and employ- ment of the ſaid company; *March* the 25th 1762, the ſhip ſailed; *September* 19th, ſhe arrived at *Bombay*; *November* the 4th, ſhe left *Bombay the firſt time*; *March* 5th, 1763, ſhe arrived at *Calcutta*. On the 28th, the preſidency and council of *Bengal*, entered into a new agreement with the captain, reciting, " that the *charter-party*, would expire on the 11th of *February*, 1764, but that the preſident and council, finding it expedient to detain the ſhip in *India*, and deſirous of having the time limited in the *charter-party* pro- longed, *&c.* the indenture therefore witneſſeth, that the captain lets the ſhip to freight for one whole year from the ſaid 11th of *February*, 1764, *&c.* *Heaton* v. *Rucker*, 3 *Burrow*, 1707. 12 *June*, 1765.

In *July* 1763, the ſhip arrived at *Bombay*, *the ſecond time*. The beginning of 1764 ſhe arrived at *Bengal*; *March* 19th, ſhe left *Bengal* to go to *Bombay*; and on the 21ſt, ſhe was loſt. A copy of the new agreement had been ſent to *London* by the captain, whose letter was received and publickly read in a coffee-houſe, in the month of *April*, 1763; and

and other insurances were made upon the ship after this new agreement was thus publickly known. The underwriters insisted, that the policies were void, because at the time of underwriting, they were not expressly told of the new agreement "to detain the ship in *India* for a year longer than the enlarged time provided for by the *charter-party*, which expired on the 11th of *February* 1764."

The causes were tried at first with different success: But all the nine verdicts were at last uniform for the plaintiffs, the *insured*, against the underwriters. The reasons that governed the court were, that the underwriters are bound and presumed to know the course of the *East-India* trade, the times of the *charter-party*, and the destination of the *India* ships, which are under the direction of the company, and not of the owners.

That the *charter-party* is a printed form of a very long standing—that, besides the liberty thereby given, to prolong the ship's stay for one year, it is very common, by a new agreement, to detain her a year longer, for no ship comes home in ballast, and the longer a ship is kept, the more beneficial it is to the owners. That the words of the policy are adapted to this usage, being without limitation of time or place, and without any reference to the first voyage particularly mentioned in the *charter party*. The terms of the policy precisely describe the risk, in its utmost latitude; and necessarily extend to every prolongation of stay, and every country voyage—That any of the defendants might have learned at the *India-House* all that was to be known. That the chance of her stay was one of the risks insured—Finally, that this ship was insured at the same premium, after the prolongation of her stay in *India* was known.

Upon the whole, the ultimate decision of the court upon these causes establishes the following rule for the information of underwriters and all persons making insurance upon *East-India* ships, "that policies of insurance upon *East-India* ships, include the "chance of their being detained in INDIA, and the risk of their *country voyages* "there."

Miscellaneous Observations and singular Circumstances respecting Insurances.

A CIRCUMSTANCE which rarely happens must be noticed in this place; because it vacates and annuls, *ab initio*, the contract of insurance. It is this; whenever an insurance is made on a voyage, expressly prohibited by the common, statute, or maritime law of the country, the policy is of no effect. The principle, upon which such a regulation is founded, is not peculiar to this kind of contract; for it is nothing more than that which destroys all contracts whatsoever that it can never be presumed that men will make an agreement forbidden by the laws; but if they should attempt such a thing, it is invalid, and will not receive the assistance of a court of justice to carry it into execution.

The most material case upon this point is, that of *Johnson* and *Sutton*, which came on to be argued in the year 1779, and received the solemn opinion of the court of King's Bench

It was an action on a policy of insurance on goods on board the ship *Venus*, "lost or not lost, at and from *London* to *New York*, warranted to depart with convoy from the Channel for the voyage." The cause was tried before lord *Mansfield* at *Guildhall*, and a verdict was found for the plaintiff. The defendant obtained a rule to shew cause why there should not be a new trial. *Park*, p. 232. 2 *Edit.*

The facts, upon his lordship's report, appeared to be these: The ship was cleared for *Ulifax* and *New-York*. She had provisions on board, which she had a licence to carry

to

to *New-York*, under a proviſo in the prohibitory act of 16 *Geo.* III. cap. 5. But one half of the cargo, including the goods which were the ſubject of this inſurance, was not licenced, and was not calculated for the *Halliſax* market, but for *New York*. There had been a proclamation by ſir *William Howe*, to allow the entry of unlicenced goods at *New-York*; and though there were bonds uſually given at the cuſtom-houſe here, by which the captain engaged to carry the goods to *Halliſax*, thoſe bonds were afterwards cancelled, on producing a certificate from an officer appointed for that purpoſe at *New-York*, declaring that they were landed there. The commander in chief had no authority under the act of parliament to iſſue ſuch proclamation, or to permit the exportation of unlicenced goods. The *Venus* was taken in her paſſage to *New-York* by an *American* privateer. The firſt ſection of the ſtatute prohibits all commerce with the province of *New-York*, amongſt others, and confiſcates all ſhips and their cargoes which ſhall be found trading, or going to, or coming from trading with them. In ſection the ſecond, there is a proviſo excepting ſhips laden with proviſions for the uſe of his majeſty's garriſons or fleets, or for the inhabitants of any town poſſeſſed by his majeſty's troops, provided the maſter ſhall produce a licence ſpecifying the voyage, *&c.* and the quantity and ſpecies of proviſions; but by the ſame *proviſo* it is declared, that goods not licenced, found on board ſuch ſhips, ſhall be forfeited.

After argument upon the motion for a new trial, lord *Mansfield* ſaid—" the whole of the plaintiff's caſe goes on an eſtabliſhed practice, directly againſt an act of parliament. If the defendant did not know that the goods were unlicenced, the objection is fair as between the parties. If he did, he would not deſerve to be favoured. But, however that may be, it was illegal to ſend the goods to *New York*, and, *in pari delicto, potior eſt conditio defendentis*. It is impoſſible to bring this within the caſes cited, *(caſes of inſurance on ſhips trading contrary to the revenue laws of foreign countries)* becauſe here there was a direct contravention of the law of the land." The rule for a new trial was made abſolute.

If a ſhip, though neutral, be inſured on a voyage prohibited by an embargo, laid on in time of war by the prince of the country, in whoſe ports the ſhip happens to be, ſuch an inſurance is alſo void. This depends upon the power of an embargo, the right of laying on which by the ſovereign of *Great Britain*, in time of war, is undoubted; although, in a time of peace, it may be a different queſtion. The right being admitted, it follows of courſe, that any act done in contravention of a proclamation of this nature is illegal and criminal, becauſe it is equally binding as an act of parliament, and a contract founded on ſuch illicit proceedings is conſequently void. *Park*, p. 234.

By the laws of almoſt all countries, the *exportation* and *importation* of certain commodities are declared to be illegal: To act contrary to that prohibition is clearly a contempt of legal authority, and conſequently a moral wrong. If the act itſelf be illegal, the inſurance to protect ſuch an act muſt alſo be contrary to law, and therefore void. Agreeably to this principle, it ſeems to have been laid down by the writers upon the ſubject, as a general and univerſal propoſition—that an inſurance being made, although in general terms, does not comprehend prohibited goods; and therefore, when the inſured ſhall procure ſuch commodities to be ſhipped, by means of which the ſhip and cargo are confiſcated, the inſurance is diſcharged; but they made the following exception, *the underwriter being ignorant of it*; a diſtinction which our courts of law will not admit; and accordingly all the modern caſes have been decided againſt the inſured, even though the underwriter knew the goods were prohibited, becauſe the act itſelf being unlawful, and the *lader* knowing it at the time of the lading, ſuch aſſurance cannot oblige the inſurer to anſwer the loſs; for the ſame is not ſuch an aſſurance as the law ſupports.

ABANDONMENT, as it regards contracts of inſurance, is underſtood to be a ceſſion and abandonment, on the part of the *inſured* to the *inſurer*, of his right to all the property that may happen to be recovered from ſhipwreck, capture, or any other peril ſtated in the policy, before he can demand a recompence from the latter for a total loſs: For, by a total loſs, we do not always mean, that the thing inſured is abſolutely loſt and deſtroyed; but that, by ſome of the uſual perils, it is become of ſo little value as to entitle the inſured to call upon the underwriter to accept of what is ſaved, and to pay the full amount of his inſurance, as if a total loſs had actually happened.

Indeed, the word *abandonment* conveys the idea, that the whole property is not loſt; for it is impoſſible to cede or abandon that which does not exiſt. When the underwriter

writer has discharged his insurance, the abandonment being made he stands in the place of the insured, and is intitled to all the advantages resulting from that situation. System of Marine Law, p. 143.

The doctrine of abandonment has obtained a place in the laws of all the maritime nations in the world, where insurance has been known. There is no difference in the definition of the word; and they all agree, that when an abandonment is made, it must be a total, not a partial one; that is, one part of the property insured shall not be retained, and the other abandoned; a regulation certainly founded in justice.

But, with respect to the cases and circumstances in which the insured is intitled to exercise this power, the regulations of some foreign countries vary from the decisions of our courts of law: However, as the principles of abandonment in no country have been more accurately defined than in *England*, and that not by the speculative opinions of private writers, but by the solemn and deliberate judgment of that great modern luminary of the *British* law, earl *Mansfield*, and other grave and learned judges of the land, we may venture to affirm, that the decisions of our courts, founded upon those principles, are established upon the solid and permanent basis of reason and equity, consequently are to be considered as of the first authority.

From these decisions we may collect, that the right to abandon must arise upon the object of the insured being so far defeated, that it is not worth his while to pursue it. For instance, if the voyage be lost, or not worth pursuing; if the salvage be very high, *suppose a half*; if further expence be necessary; if the insurer will not engage at all events to bear that expence, though it should exceed the value, or fail of success: Under these and many other similar circumstances, the insured may disentangle himself, and abandon, notwithstanding there has been a re-capture.

It is material to observe that the right to abandon must depend upon the nature of the case at the time of the action brought, or at the time of the offer to abandon: A determination founded on the equity of the contract between the parties; because an insurer ought never to pay less, upon a contract of indemnity, than the value of the loss, and the insured ought never to gain more.

But it is evident, that there may be circumstances in which it would be contrary to every principle of justice to suffer the insured to abandon: Suppose a ship to be taken, and escape immediately, which would be no hindrance to the voyage, or another to be captured and instantly ransomed, which would amount only to a partial loss; in these cases, the insured could not be allowed to demand a recompence for a total loss.

In many of the maritime countries on the continent of *Europe*, the time, within which the abandonment must be made, is fixed by positive regulations. Thus, in *France*, it is ordained, that all cessions or abandonments, as well as demands in virtue of the policy, shall be made as follows: In six weeks, for losses happening on the coasts of the country where the insurance was made: In three months, in other provinces of the kingdom: In four months, on the coast of *Holland*, *Flanders* and *England*: In a year, in *Spain*, *Italy*, *Portugal*, *Barbary*, *Muscovy*, *Norway*; and in two years, for the coasts of *America*, the *Brasils*, *Guinea*, and other distant countries. When these terms are elapsed, the demands of the assured shall not afterwards be admitted. Ord. of *Lewis* XIV. Insurance, Art. 48.

In the law of *England*, till lately, we had no limitation of time, with respect to abandonment. But in a very modern decision it has been held, by the court of *King's-Bench*, that as soon as the insured receive accounts of such a loss as intitles them to abandon, they must, in the first instance, make their election whether they will abandon or not; and, if they abandon, they must give the underwriters notice in a reasonable time, otherwise they forego their right to abandon, and can never afterwards recover for a total loss. *Park*, p. 172.

But if the insured, hearing that his ship is much disabled, and has put into port to repair, express his desire to the underwriters to abandon, and be dissuaded from it by them, and they order the repairs to be made, they are liable to the insured for all the subsequent damage occasioned by that refusal, though it should amount to the whole sum insured: Because the reason why notice of abandonment is deemed necessary is,

to prevent ſurprize, or fraud, upon the underwriter; but, in the caſe put, they have, by their own act, ſuperſeded the neceſſity of notice.

It is of the utmoſt conſequence to all perſons concerned in inſurances in *England* to know, that where the ſentences of foreign courts, in cauſes of inſurance, have not differed materially from our laws, or from the law and cuſtom of merchants, the deciſion of the foreign judicatures has been held concluſive in our own, in numerous caſes tried before lord *Mansfield*; and others which, upon motions for new trials, received the ſolemn deciſion of all the judges of the court of *King's-Bench*.

Nor is this all; for, even where the laws of other countries differ from thoſe of *England*, if the contract of inſurance regards a ſhip belonging to ſuch countries, though the underwriter be a *Britiſh* ſubject, the deciſion in our courts will follow that of the foreign tribunal, if any has been had, or will proceed upon the ground of eſtabliſhed uſage amongſt merchants in thoſe countries. This very lately appeared in a cauſe tried in the *King's-Bench* at *Guildhall*, before lord *Kenyon*, the preſent chief juſtice.

It was an action on a policy of inſurance upon a *reſpondentia* bond on ſhip and goods, at and from *B.* to *C.* The ſhip was *Daniſh*, and an average loſs was ſuſtained upon the goods to the amount of 6*l.* 15*s. per cent.* and the plaintiff, as holder of a *reſpondentia* bond, had been called upon to contribute; and now brought his action againſt the *Engliſh* underwriters for the amount of that contribution. *Walpole* v. *Ewer*. Sittings after *Trin.* term, 1789.

Lord chief juſtice *Kenyon* ſaid—"By the laws of *England*, a lender upon *reſpondentia* is not liable to average loſſes; but is intitled to receive the whole ſum advanced, provided the ſhip and cargo arrive at the port of deſtination. The plaintiff contends, that as, by the laws of *Denmark*, ſuch lenders upon reſpondentia are liable to average, and bound to contribute according to the amount of their intereſt, the inſurer muſt anſwer to them. The *Daniſh* conſul has proved that he received a judgment of the court of *Copenhagen*, the decretal part of which proves the law of *Denmark* to be as the plaintiff has ſtated it. The opinions of ſeveral men of eminence in that country have been offered on each ſide; but I reject them, becauſe the ſolemn deciſion of a court of competent juriſdiction is of much greater weight than the opinions of advocates, however eminent, or even than the extra-judicial opinions of the moſt able judges. It ſeems as if, in this caſe, the underwriters were bound by the law of the country, to which the contract relates.

Verdict for the plaintiff.

The above is not the only caſe in which the inſurers have been held liable to indemnify; the inſured having been obliged, by the law of a foreign country, to pay a larger ſum than by the laws of *England* could have been demanded; and, in the following caſe, the learned judge ſeems to have relied chiefly on the uſage of merchants which had been proved.

It was an action on a policy, upon a cargo of fiſh from *Newfoundland* to any port of *Spain*, *Portugal* or *Italy*. The ſhip met with bad weather, and put into *Alicant* and *Leghorn* to repair. The captain, being owner, preſented a petition to the commercial court of *Piſa* to adjuſt the general average, as he had put in for the general benefit of all concerned. The court, according to its uſual courſe, which appears to be a very extraordinary one, adjuſted the loſs by charging the cargo at its full value; but the ſhip only at one half, and the freight at one third: And they alſo charged, as a part of the general average, the ſeamens' wages and proviſions, while in port. The *defendant*, as underwriter, had paid into court as much as would cover the average, if adjuſted according to the memorandum in the policy, and the law and uſage of *England*. *Newman* v. *Cazalet*; Sittings at *Guildhall*, after *Hill.* 1789.

The queſtion was, whether the plaintiff having been compelled to pay beyond that ſum, according to the calculation of the ſentence of the court of *Piſa*, it was concluſive upon the defendant, and the plaintiff was intitled to recover his average by the ſame ſtandard. The plaintiff called ſeveral brokers, who ſaid, that in repeated inſtances they had adjuſted averages under ſimilar ſentences of the court of *Piſa*; and the underwriters, though with reluctance, had always paid them.

Mr. juſtice *Buller*—"On the general law, the plaintiff would fail; but in all matters of trade, *uſage is a ſacred thing*. I do not like theſe foreign ſettlements of average, which

which make underwriters liable for more than the ſtandard of *Engliſh* law. But if you are ſatisfied it has been the *uſage*, upon the evidence given, it ought not to be ſhaken." The plaintiff had a verdict accordingly.

OF A RETURN OF PREMIUM it is needleſs to cite any caſes, as the principle, upon which the whole of this doctrine depends, is ſimple and plain, admitting of no doubt or ambiguity. The riſk or peril is the conſideration for which the *premium* is paid: If the riſk be not run, the conſideration for the premium fails; and equity implies a condition, that the inſurer ſhall not receive the price of running a riſk, if, in fact, he runs none. It is juſt like the contract of bargain and ſale; for if the thing ſold be not delivered, the party who agreed to buy is not liable to pay. Thus, to whatever cauſe it be owing that the riſk is not run, as the money was put into the hands of the inſurer merely for the riſk of indemnifying the inſured, the purpoſe having failed, he cannot have a right to retain the ſum ſo depoſited for a ſpecial cauſe. The cauſes tried and decided upon this principle are accurately reported by *Park*, p. 368, and ſequel.

The two following caſes are of ſo ſingular a nature, that they cannot properly be claſſed under any general rule, or common inſtances.

Policy of inſurance, to warrant a ſhip for twelve months. The ſhip did not periſh within the time of twelve months, accounted according to the *Solar* months of *January*, *February*, &c but within twelve *Lunar* months of *twenty eight* days to the month; and it was reſolved, that the policy was not forfeited. Cited in Sir *Wool. Dixey*'s caſe, 1 *Leon.* ~~69.~~ 96.

After citing a clauſe in the ſtatute of 6 *Geo.* I. c. 18, which prohibits any other ſociety or partnerſhip whatſoever from making inſurances, or lending money on bottomry, except the two corporations eſtabliſhed by that act, *viz.* the *Royal Exchange* and the *London Aſſurance Offices*, our author relates, that upon this clauſe, a queſtion lately aroſe at *Guildhall*. *Park*, p. 7.

This was an action brought againſt the defendant, to recover a ſum of money received by him from one *Briſtow* to the plaintiff's uſe. The plaintiff was an underwriter, and the defendant was a broker; and a loſs having happened upon a policy underwritten by the plaintiff, he had been obliged to pay it: But *Briſtow*, having agreed to take half the plaintiff's riſk, had paid his moiety of the loſs into the hands of the defendant; to recover it from whom this action was brought. *Sullivan* v. *Greaves*. Sittings after *Eaſter* term, 1789.

Lord chief juſtice *Kenyon*—" I am of opinion that the plaintiff cannot recover; for this is clearly a partnerſhip within the act of parliament. If a ſingle name appears upon the policy, as in this caſe, the inſurer ſhall never be allowed if a loſs happen, to defeat a *bonâ fide* inſurance, by ſaying to an innocent perſon, there was a ſecret partnerſhip between another and myſelf, and therefore the policy is void. But here, the plaintiff is himſelf the underwriter, who comes to enforce an illegal contract: It is a partnerſhip *pro hac vice*; and this party cannot apply to a court of juſtice to enforce a contract founded in a breach of the law."

No motion was ever made to ſet aſide the non-ſuit: But, two or three days after, lord *Kenyon* took occaſion to mention to the counſellors at the bar, that he had ſtated the caſe to the other judges of the court of *King's-Bench*, who were unanimouſly of the ſame opinion with his lordſhip.

To the great variety of new caſes of inſurance introduced in the preſent edition, we have only to add the following juſt obſervations from *Weſkett's Complete Digeſt of the Theory, Laws, and Practice of Inſurance*, a work of great merit, fol. *Lond.* 1781:—" As there are in *England* but very few expreſs laws and regulations concerning inſurance, nor any diſtinct court, commiſſioners, or other perſons, appointed particularly, as in other countries, for the deciſion and adjuſtment of loſſes, average, ſalvages, recaptures, and the almoſt infinite variety of matters and differences that ariſe therefrom, the only reſort in caſes of diſpute being to our common law courts, with enormous expence, trouble, and uncertainty; it is the more needful for an inſurer to be well acquainted with commercial and maritime affairs in general, and the doctrines, laws, uſages, and practice concerning them, as well abroad as at home; ſince all theſe various and ſometimes intricate tranſactions, accounts, documents, &c.

" *&c.* which occur amongſt merchants, mariners, and other perſons in the courſe of " foreign traffick; and other events may occaſionally come under his cognizance, eſpe- " cially in time of war, and require the exerciſe of a ſuitable judgment upon them; " which, if he is unable to do for himſelf, he muſt neceſſarily be ſubject to, and his for- " tune chiefly depend upon the deceit, impoſition, and fraud, or at leaſt the ignorance " of many of the perſons he has to deal with."

Having mentioned the various branches of inſurance engaged in by our underwriters, it is proper in this place to give the copy of a policy on goods, thoſe on ſhips and goods, or ſhips only, and this again either outwards or homewards, or out and home, or to one certain port, only differing in the aforeſaid circumſtances.

IN the name of God, *Amen.*
as well in his own name, as for and in the name and names of all and every other perſon or perſons to whom the ſame doth, may, or ſhall appertain, in part or in all, doth make aſſurance, and cauſeth himſelf and them, and every of them to be inſured, loſt or not loſt, at or from
upon any kind of goods and merchandizes whatſoever, laden or to be laden aboard the good ſhip or veſſel, called the whereof is maſter, under God, for this preſent voyage,
or whoſoever elſe ſhall go for maſter in the ſaid ſhip, or by whatſoever other name or names the ſame ſhip, or the maſter thereof, is or ſhall be named or called; beginning the adventure upon the ſaid goods and merchandizes, from, and immediately following the lading thereof aboard the ſaid ſhip
and ſo ſhall continue and endure, until the ſaid ſhip, with the ſaid goods and merchandizes whatſoever, ſhall be arrived at
and the ſame there ſafely landed; and it ſhall be lawful for the ſaid ſhip, in this voyage, to ſtop and ſtay at any port or places whatſoever without prejudice to this inſurance; the ſaid goods and merchandizes, by agreement, are and ſhall be valued at
without further account to be given by the aſſured for the ſame. Touching the adventures and perils which we the aſſurers are contented to bear, and do take upon us in this voyage; they are of the ſeas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and counter-mart, ſurpriſals, taking at ſea, arreſt, reſtraint, and detainment of all kings, princes, and people, of what nation, condition, or quality ſoever; barretry of the maſter and mariners, and of all other perils, loſſes, and misfortunes, that have or ſhall come to the hurt, detriment or damage of the ſaid goods and merchandizes, or any part thereof. And in caſe of any loſs or misfortune, it ſhall be lawful to the aſſured, their factors, ſervants, and aſſigns, to ſue, labour, and travel for, in and about the defence, ſafe guard, and recovery of the ſaid goods and merchandizes, or any part thereof, without prejudice to this inſurance; to the charges whereof we the aſſurers will contribute each one according to the rate and quantity of his ſum herein inſured. And it is agreed by us the inſurers, that this writing or policy of aſſurance ſhall be of as much force and effect as the ſureſt writing or policy of aſſurance heretofore made in *Lombard ſtreet*, or in the *Royal Exchange*, or elſewhere in *London*. And ſo we the aſſurers are contented, and do hereby promiſe and bind ourſelves, each one for his own part, our heirs, executors and goods, to the aſſured, their executors, adminiſtrators, and aſſigns, for the true performance of the premiſes, confeſſing ourſelves paid the conſideration due unto us for this aſſurance by the aſſured at and after the rate of
per cent. And in caſe of loſs, which God forbid, the aſſureds to abate pounds *per cent.*

In witneſs *whereof, we the aſſurers have ſubſcribed our names and ſums aſſured in* London.

N. B. Corn, fiſh, ſalt, fruit, flour, and ſeed, are warranted free from average, unleſs general, or the ſhip be ſtranded. Sugar, tobacco, flax, hemp, hides, and ſkins, are warranted free from *average*, under five pounds *per cent.* And all other goods, alſo the ſhip and freight are warranted free from *average* under three *per cent*, unleſs general, or the ſhip be ſtranded. *Park*, Appen. No. 1.

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The written clauſes or words inſerted in the uſual printed forms of policies, in order to expreſs the meaning of the parties to the contract, which from ſome particular circumſtances, the printed form may not ſufficiently explain, are equally binding with the printed clauſes, and in many caſes may control them.

Of Foreign Inſurances.

INSURANCES made in *France* and *Holland*, being the only countries where any thing conſiderable is tranſacted in this ſpecies of buſineſs, out of our own, I ſhall begin with the latter, as ſuperior to the other in point of commerce, and more largely concerned with the merchants of *Great Britain* than any other maritime power on the continent of *Europe*.

It is generally believed, and by many affirmed, that more inſurances are made at *Amſterdam* than with us, or indeed in any other part of the world; their extenſive commerce by ſea, and the extraordinary number of veſſels continually ſailing from thence, naturally occaſions many to follow the practice of inſuring; but what has yet augmented this buſineſs, and multiplied the policies of inſurance almoſt to infinity, has been that honour and integrity with which their underwriters were formerly characterized, as their policies were then only ſubſcribed by men of large fortunes; but whether great loſſes, or a ſubſiding of that courage, before ſo conſpicuous in the very ſmall number of the rich, then conſtituting the body of underwriters, for Mr. *Savary* and Mr. *Ricard* ſay, they did not exceed fifty or ſixty, occaſioned their withdrawing from buſineſs, I ſhall not pretend to determine; but it is certain, their number in the preſent century, has greatly increaſed, and their chicaneries are at leaſt equal to thoſe of their neighbours and contemporaries; and had they not admitted buſineſs on worſe terms than here, that is at lower premiums, there would not have been that recourſe to their city, as the many failures amongſt the inſurers plainly demonſtrated they had changed their ſet, and that many of leſs credit and fortune were admitted to ſubſcribe, than the wealthy few abovementioned.

The firſt ordinance in that city, which regulated the policies of inſurance, was about the end of the ſixteenth century; it was originally digeſted into thirty-ſix articles, but many of theſe have ſince been reformed, new-modelled, or explained by twelve ſubſequent ordinances, of which the principal ones are thoſe of the years 1600, 1601, 1606, 1607, 1614, 1626, and 1688, and it is by this laſt, that the policies of inſurance may be ſaid to remain fixed, though ſome few alterations have been made ſince.

But Monſ. *Jean Pierre Ricard*, in his book, *Le Negoce d'Amſterdam*, having given an account of the articles made at the ſeveral times abovementioned, with his remarks on them; I ſhall tranſlate as much of them as I judge may be worth my reader's regard, and in doing it ſhall follow the author's method. P. 250 to 274.

No. I.

1ſt Article, "declares all contracts of inſurance null and void, which are made in "this city contrary to law, by any ſtipulations, conditions, or words they ſhall "contain."

Remark. This article is not always ſtrictly followed; for many inſurances are made which are not exactly conformable to the ordinance, and others directly contrary to it, as will be ſeen in the following remarks; but when this happens, a clauſe ſhould be inſerted in the policy, by which the inſurers expreſsly renounce all the laws, ordinances, and placarts, which are againſt ſuch an inſurance; and in caſe of a loſs, and that the inſurers

ſurers will not ſettle it amicably, the aſſured may cite them before the ſheriffs, or the court of *Holland*, to bring them to reaſon, and not before the chamber of aſſurances, becauſe the renunciation made by the inſurers includes an excluſion from this court, which can only determine in conformity with the ordinance.

2d Article, " prohibits the making inſurance on goods for more than $\frac{1}{10}$ of their " clear coſt abroad, when it does not exceed 12,000 guilders; but permits the ſurplus " of that ſum to be inſured, provided the aſſured runs the riſk of the $\frac{1}{10}$ of the 12,000 " guilders."

Remark. This article is very rarely obſerved, and there is hardly any one policy which does not contain theſe words, *And the aſſured may cauſe himſelf to be inſured the whole, without riſking the tenth, we taking on us the entire value, even with the premium included*; and I do not ſee what occaſion the aſſured has to run a riſk of the tenth, as the difference of 12,000 guilders on an inſurance of 30 or 40,000 is but trifling to the underwriters: However, notwithſtanding it is ſo inſerted in the policy, that the whole is inſured, yet if the inſurer diſputes payment in caſe of a loſs, and is cited before the commiſſioners, they will have no regard to this clauſe; but, on finding that the aſſured has not run the riſk of the tenth of the 12,000 guilders, they will make him run it, by obliging him to return the premium of what exceeds the tenth, or by adding it to that part of the loſs, which the aſſured ought to bear.

3d Article ordains, " that the policies contain the name of the ſhip and of the cap- " tain, that of the places where ſhe is to lade, and go to, under penalty of the policy's " being void, if the fault is in the aſſured; but if it comes from the broker he ſhall be " anſwerable for it."

Remark. It is very neceſſary to obſerve this article, in all its contents nicely, becauſe the aſſured not only have an opening to deceive the inſurers by wilfully omitting the name of ſhip or maſter in the policy, but many diſputes may happen, and the underwriters may, by having already inſured a very large ſum on the ſame ſhip, be rendered ſcrupulous of ſigning ſuch policies.

However, there are caſes where it is impoſſible to know upon what veſſel there will be an intereſt, by reaſon of the diſtance of the place from whence goods and effects are expected; as, for example, from *Curaçao*, *Surinam*, *Archangel*, or other remote parts, from whence effects, and the advice of their lading, are frequently received together; and as it would be very hard for a merchant, who expects effects from thoſe parts, to find that he is unable to get himſelf inſured, only for want of the name of the ſhip and captain, it may be remedied by inſerting in the policy, that the inſurance is on goods, to be laden by *ſuch a one*, on one of the firſt ſhips that ſhall come from thence.

The *Spaniards* frequently get inſured at *Amſterdam*, on any veſſel or veſſels which have laded goods at *La Vera Cruz*, or elſewhere in the *Spaniſh Weſt-Indies*, to their addreſs; but there is found ſuch deceit in theſe contracts, by the concerned ſending falſe declarations, that they had not received any thing upon any ſhip of the *Flota* or *Flotilla* when they had, and returning the premium, as has made the greateſt part of the inſurers reſolve not to underwrite to thoſe gentlemen, but on condition to make no returns, although the aſſured ſhould have no intereſt in the fleet.

4th Article ordains, " that the inſurance on goods ſhall begin from the moment " they are brought on the key, to be carried on board the ſhip deſtined to tranſport " them, and ſhall endure till they are arrived at the place of their conſignment, and " are unladed in ſafety, and free from damage."

Remark. There are ſome who imagine they have no right to be inſured till the goods are laded, and bills of lading ſigned; and others, who receiving advice from abroad, of freight being taken on a ſhip and captain named, believe they ought not to inſure, till they receive advice of the departure of the ſhip, or at leaſt till they have got the bill of lading and invoice, in which they greatly err; for, beſides that the policy expreſſes *on goods laden or to be laden*, the article before-mentioned ſeems to ſuppoſe the inſurance made before the embarking; but it is not to be imagined, that if the merchandize has ſuffered in going on board, and is afterwards inſured, that the inſurer is obliged to pay the damage, on pretext that it is ſaid in the policy, *that the inſurance ſhall commence from the moment that the goods are upon the key*, &c. This would be very unjuſt, therefore it ought to be underſtood only, when the aſſurance is made before the goods are taken

out

out of the warehouſe, or before they are ſent aboard; for beſides the riſk which the aſſured runs in ſhipping them, which is greater in ſome places than in others, he likewiſe expoſes himſelf to pay a higher premium than if he had inſured ſooner, becauſe the more inſurances there are made on a ſhip, the higher premiums the inſurers demand; and it is further to be remarked on this article, *that although the riſk is not finiſhed till the goods are unladen and ſafe*, that, as at *Amſterdam*, they are frequently left in the lighters for five or ſix days, or more, the inſurers are not obliged for any damage that may happen to them, only for the firſt day.

5th Article ſays, "that if in a year and a day, after the inſurance made, or after the "ſhip's departure, if it is for any part of *Europe* or *Barbary*, there is no news of her at "the place from whence ſhe ſailed, nor at that ſhe was bound to, ſhe ſhall be "eſteemed as loſt, and the aſſured may demand payment from the inſurers in three "months; but for places more diſtant, the term ſhall be that of two years."

Remark. It too often happens that ſhips founder at ſea, ſo that no perſon eſcapes to tell the ſtory, and our underwriters do not poſtpone payment according to the preceding terms, as this would oblige them to a total loſs, that is *cent. per cent.* but in order to leſſen it ſomething, when they ſee the aſſured has no advice of the ſhip, and when ſhe ſtays two or three times longer than ſhe ſhould, ſo that there is no room to ſuppoſe her ſafe, they themſelves endeavour to agree with the aſſured, and commonly ninety-ſix *per cent.* on ſuch occaſions.

6th Article declares, "thoſe aſſurances to be null and invalid which are made three "months after the departure of the ſhip deſtined for the coaſt of *Europe*, *Barbary*, and "the adjacent parts, or thoſe made in ſix months after the ſhip's departure for more "diſtant places, if the aſſured does not advertiſe the inſurers thereof, and if he does "not get himſelf inſured, on good and bad news; that is, loſt or not loſt."

Remark. That as the articles 20 and 21 have an affinity with the foregoing, I ſhall remark on them altogether.

20th Article imports, "that it is permitted to inſure ſhips, merchandize, and effects "that are loſt, pillaged, or damaged, even after the loſs, *&c.* has happened, provided "that the aſſured has no advice of the loſs, *&c.*

21ſt Article ſays, "that the aſſured ſhall be ſuppoſed to have known of the loſs, *&c.* "if he has omitted to make inſurance, till after he can have received advice either by "land or ſea, counting three leagues of way, or two hours of time; and that then "the aſſurance ſhall be void, notwithſtanding, or maugre, all the proofs of ignorance "the aſſured may be able to give; unleſs he is inſured on good or bad news, and that "he can ſwear that when he made the inſurance he had not the leaſt account of the "loſs, *&c.*"

Remark. By theſe three articles, which ſeem to be made in favour of the inſurers, they are notwithſtanding expoſed ſometimes to the cheats of people, who make no conſcience of a falſe oath, provided it brings gain, and therefore the inſurers ſeldom underwrite in theſe caſes to unknown perſons, or at leaſt in prudence they ſhould not; and what may be gathered from the ſaid third article, is, that the ignorance of the aſſured, in regard of the ſhip, or touching the good or bad advices concerning her, are the two only conditions which can render the inſurance valid, and therefore the oath is very neceſſarily ordained in theſe caſes; for what would be more unjuſt than to inſure a thing known to be loſt, which could never enter the thoughts of an honeſt man; but as theſe articles permit an inſurance to be made, whilſt the loſs, pillage, or damage remains unknown, conſequently it may be done on a veſſel ſuſpected to be loſt after a ſtorm, or feared to be taken by an enemy, from ſome confuſed flying reports about her, though without learning any thing certain; *for example*, ſuppoſe a ſtorm to happen, with many ſhips in the *Texel*, and that ſeveral of them were ſeen to drive, and, among others, ſuch and ſuch a one, and that it is feared they may be loſt; in which caſe, the concerned, knowing that there will at leaſt be large averages, and that there is no room to ſuſpect a total loſs, if no advice is received in two or three days; yet as this is uncertain, and cannot poſſibly be known, the intereſted perſon may make inſurance, if he can find thoſe that will underwrite, after the advices above-mentioned, on payment of a premium proportionable to the riſk: It is the ſame with reſpect to a ſhip which is ſaid to be taken by the enemy, though the report is unconfirmed, and all

other

other ſimilar caſes, in which the inſurance will ſtand good, *provided* it is inſerted in the policy the laſt news there was of the veſſel, and that the inſurance is upon good and bad advices, of which the aſſured can ſwear that he knows of no others at the time of making the ſaid inſurance.

7th Article declares, " that the inſurance ſhall be null, if the aſſured makes his " ſhip to touch at any other ports than thoſe mentioned in the policy; but if this is done " by the maſter, either through choice or neceſſity without the aſſured's order, it " ſhall not hurt the inſurance."

Remark. This article, though ſo very clear as to explain itſelf, is notwithſtanding very often the occaſion of many diſputes between the aſſurers and aſſured; the former endeavouring to make the firſt part of it ſerve as a juſt plea for non-payment of a loſs or average happening in any port not mentioned in the policy, if a declaration of the captain and crew is not very expreſs, that he was obliged to go into it through neceſſity; in which caſe the inſurers have nothing to reply, becauſe the affidavit of the maſter and his men is credited, and the underwriters are condemned without the leaſt difficulty; but as it frequently happens that a ſhip goes into ſome port by order of the owner, or principal freighter, unknown to the other laders, it is very important to remark the ſenſe of this article, and to diſtinguiſh him who knew that the veſſel would touch at certain ports, from him who laded only for one, and did not know that ſhe was to call at others: *For example*, ſhips are daily ſet up at *Amſterdam* for *Bourdeaux*, and the merchants lade aboard them, without inquiring or imagining that they are to ſtay at any place by the way, and make their inſurances directly for that place; nevertheleſs it happens that ſome one has a conſiderable parcel of goods to ſhip for *Rochelle*, and not finding a ſhip ready to depart from that port, he agrees with the maſter lading for *Bourdeaux* to take his goods for *Rochelle*, and obliges him to deliver them before he proceeds to *Bourdeaux*; if this is tranſacted without the knowledge of him who makes inſurance for *Bourdeaux* only, and any miſchance happens to the ſhip at *Rochelle*, this ſhall not occaſion a nullity in the policy of him who was ignorant that the veſſel muſt call at the latter; but there will be one in the policy of an owner of ſuch a ſhip, who has got inſurance made on her directly for *Bourdeaux*; becauſe, according to this article, *he could not direct her going into any other port but that mentioned in the policy*, and that it is ſuppoſed he knew, when he made his aſſurance, that the ſhip was to touch at *Rochelle*; for if he did not know it till after his policy was ſigned, he ought to have got a clauſe inſerted therein, that the ſhip ſhould have liberty to call there.

It every day happens, that veſſels which are lading for *Marſeilles*, *Genoa*, and *Leghorn*, take in goods for *Cadiz*, *Seville*, *Barcelona*, and other ports in their way, without its being known to thoſe who ſhipped for the firſt three places, and who only got their intereſt inſured to that of one of them, where the merchandize went conſigned, without inſerting in the policy, a liberty for the ſhip to touch by the way at the aforeſaid ports, and the inſurers do not uſe to make any diſpute about it with the ſhippers who are ignorant of it, becauſe they know well enough that it is cuſtomary for ſuch ſhips to take in merchandize for different places; but an owner who inſures, *for example*, from *Amſterdam* to *Leghorn*, without putting in the policy, that the ſhip *may touch at, or go into all ports that are in her route*, his inſurance ſhall be diſcharged, if the veſſel is loſt in any one of the ports in which he ſhall have entered, *&c.*

8th Article, " limits the aſſured to ſix months for abandoning any ſhip or effects to " the inſurers, which ſome foreign power has ſtopped and retains, when the retention is " on the coaſts, or within the limits of *Europe* or *Barbary*; and one year if it is in any " more remote place, counting from the day that the brokers ſhall have advertiſed the " inſurers thereof, by directions from the aſſured; and it permits theſe latter, within " the times ſo limited, to take their precautions againſt the underwriters, by ſecurities, " pawns, or otherwiſe, as they ſhall think proper; permitting them beſides, or their " agents, to lade the merchandize reclaimed and releaſed, upon other ſhips, to be " carried to the place they were deſigned for; and if the aſſured omit it, the inſurers may do it; in which caſe, theſe latter ſhall only be obliged to defray the " expence of lading and freight, and to pay for any damage the goods may have " ſuffered during their embargo."

9th Article, makes an exception in the before-mentioned time, in reſpect of periſhable commodities, ſuch as wines, fruits, grains, *&c.* in regard of which, " the aſſured " ſhall not be obliged to wait the expiration of the ſaid ſix months, but may endea- " vour to obtain their releaſe in the manner he deems beſt, though he muſt make the " inſurers acquainted with the condition the merchandize is in."

Remark. In the two preceding caſes of a detention or an arreſt, the inſurers leave the care of reclaiming what ſhall be ſo ſtopped to the aſſured: But theſe ſhould not fail to be well and duly authorized by the inſurers, which authorization is invalid, except made by the *Huiſſier*, an officer of the chamber of inſurances; and therefore it imports the aſſured not to neglect having it made by him that may effectually ſerve them, in caſe the inſurers ſhould make any wrangling about the charges of reclaiming, *&c.* as theſe commonly are exorbitant, and frequently occaſion great diſputes; to avoid which the aſſured ſhould abſolutely do nothing without the conſent of the underwriters; and when the ſum is pretty heavy, it will be adviſable to engage one or two of them to act in concert with the aſſured, at leaſt in obtaining the releaſement of the embargoed effects.

If the merchandizes reclaimed are releaſed, and laden on ſome other ſhip, in order to finiſh the voyage, the aſſured ſhould not fail to make the inſurers declare it by a clauſe at the bottom of the policy, by which they acknowledge to be adviſed that the ſhip, upon which the merchandize inſured was laden, having been embargoed, it was ſhipped on board ſuch other veſſel, and that they continued the ſame riſk, as they ran on the firſt ſhip, to their deſtined port.

10th Article, " prohibits the making inſurance on the body of the ſhip, guns, and " warlike ſtores, for above two thirds of their value, and to inſure in any manner " whatſoever the freight, ſtores, powder, balls, victuals, or ſuch like conſumable " things."

Remark. This article was too burthenſome to owners of ſhips, in obliging them not to inſure above 24,000 guilders, upon an intereſt of more than 35 or 36,000; ſo that their riſks were reduced to an eighth part of the value of ſhips, by the firſt article of the ordinance of the 26th of *January*, 1693, as will be ſeen hereafter.

11th Article, " prohibits maſters of ſhips, mates, ſailors, men at arms, and all " others who ſerve aboard, to inſure their ſalaries, or any thing that belongs to them, " except they have goods with them above the import of their wages."

Remark. This article is founded on ſubſtantial reaſons, of which the principal is, as I imagine, that as the owners are not obliged to pay the mariners after looſing their ſhip, theſe latter commonly endeavour all they can to ſave her, when in danger, in order to ſecure their pay; and it is certain that they would not act on ſuch occaſions with ſo much zeal, if their wages were inſured.

12th and 13th Articles, " limits the time in which the aſſured are obliged to bring " their action of damage or average againſt the inſurers, *viz.* a year and a half, if " the loſs or damage has happened on the coaſts of *Europe* or *Barbary*, and in three " years, if it has happened in more diſtant regions; to be reckoned from the time of " the ſhip's entire diſcharge, or from the time in which the loſs has happened."

Remark. The caſe very ſeldom happens, that the aſſured wait ſo long a time to demand their loſs or average from the inſurers, or at leaſt to let them know that they have one to ſettle, which is ſufficient for commencing an action againſt them in caſe of a refuſal, even when they cannot know till a long time after, what the ſaid loſs or average will amount to.

14th Article ſays, " that all the preceding orders are to be underſtood for aſſurances " made on every thing that goes by ſea, *&c.*"

15th Article, " regards the inſurances made on goods, carried by land, or rivers, the " which the merchants may contract among themſelves, as they ſhall think proper, " except that the aſſured ſhall run the riſk of the $\frac{1}{10}$, as in the ſecond article of this or- " dinance, and that the carters and waggoners ſhall not inſure above half the va- " lue of their carts, waggons, or horſes, and nothing of their wages."

Remark. There are very few of theſe ſorts of inſurances made at *Amſterdam*, therefore I ſhall not make any obſervations on this, or the ſubſequent article 16, which is only " to allow the aſſured a year's time to demand from the inſurers, the recovery of the " loſs or average which has happened to the goods, going by land or river."

17th Article ordains, " that if insurance is made upon grains, fruits, wines, oils, " salt, herrings, sugar, quicksilver, tallow, butter, cheese, hops, syrup, honey, seeds " round or flat, and such like things as are subject to corruption: upon ammunition, " and upon silver coined and uncoined; they shall be specified in the policy, upon " penalty of its being otherwise null and void."

Remark. The alteration of this article will be seen in what follows, at number 3.

18th Article, " permits the contracting parties in assurances, to make them before " notaries, registers, or other publick officers, or by private notes of particular per- " sons, or before creditable witnesses."

Remark. As this ordinance was made on the 31st of *January* 1598, it appears that but few insurances were made then, and they were permitted to be under a private firm, and upon common paper; but the number of them having considerably increased since that time, it was necessary, as will be seen in the sequel, to ordain a set form, and to have it marked by the secretary of the chamber. For a long time, all sorts of policies were drawn up indifferently, under the twelve stiver seals; but by the regulation made by the states of *Holland* and *West Friseland*, upon the duty of the small seal, of the 28th of *August*, 1716, in the 58th Article, " it is ordained, that all the policies for sums " under 500 guilders, shall for the future be made under the twelve stiver seals; those of " 500 guilders, and less than 10,000, under the twenty-four stiver seals; and those of " 10,000 and upwards, under the forty-eight stiver seals."

But as it would be imprudent in the brokers to hazard a sealed policy, when their employers order them to get a sum insured at a limited price, or on such conditions, as they doubt will not be complied with, they have small policies on common paper, which they often get the underwriters to sign, and afterwards to transfer their firms to such as are ordained by law, when the insurance is completed.

19th Article, " orders all those concerned in policies, to make them out according " to the ordinance, and to keep a copy, *verbatim*, of all the handwriting therein."

Remark. This is so much the more necessary, as the assured may happen to tear or lose a policy, or some knave who has got himself insured, may alter something therein to his benefit, and the disadvantage of the insurers; in which case, and in other similar ones, the copy which the broker keeps, may serve for a proof and testimonial.

I have already noticed the Articles 20 and 21, under the 6th.

22d Article, " permits the assured to demand a return of premium from the insurers, " except $\frac{1}{2}$ *per cent.* if he does not lade the goods, or those are not shipped for him, " on which the insurance was made, or if he has insured more than the value of the " merchandize he has shipped, or is shipped for him."

Remark. When a return of premium is demanded, it should be done as soon as possible, to remove all suspicion from the insurers, of an intention to cheat them in case of damage; and if the insurance is made on a ship coming from a distant port, in the expectation of having some goods by her, which on her arrival is found to be otherwise, the assured should shew the underwriters, when he demands the return, the letters he may have received, with the advice that his correspondents could not send him any thing by that occasion; or at least a declaration from the captain, attesting, that he brought nothing for the assured; for without this, he will not be unlike those people, who finding their merchandize safe arrived are so dishonest to affirm they had nothing aboard, in order to procure a return.

23d Article, " ordains, that the last underwriters shall participate in the insurance, " as much as the first, either in profit or loss."

Remark. With regard to profit or loss, one insurer may have more than another in the same insurance; for when a very large sum is to be insured, and a good part of it is done at a certain price; *for example*, at three *per cent.* but a sufficiency to complete it is not to be obtained on these terms, the premium is raised to four *per cent.* in which case the last underwriters gain one *per cent.* more than the first, if the adventure arrives safe, and lose one *per cent.* less than the others, in case it does not; but it is not in this respect, that this article is to be understood, for it only ordains, that each insurer shall partake of the profit or loss, in proportion to the sum he has signed for,

for, *viz.* if the insurer, who has underwrote at three *per cent.* gains the premium, he that has underwrote for four or five *per cent.* gains it also; and if he that has signed for three *per cent.* pays fifty or sixty *per cent.* loss or average, he that has by his firm obtained four or five *per cent.* shall pay neither less nor more than the other.

24th Article, "orders upon pain of nullity, not to make insurance upon the life "of any one, nor upon any wager of a voyage, nor any such inventions."

Remark. As there is no point of practice, or subtlety in the world, either to gain or preserve money, which has not been found out or invented at *Amsterdam*, this article is not always religiously observed, and there are people, who having a post, which, for example, may bring them in 3000 guilders *per ann.* get that sum insured on their life for a certain number of years, that if they die, their family may enjoy the revenue, for the remainder of the term insured; but these are very tickliſh insurances.

25th Article imports, "that the assured having abandoned in form to the insurers, "the latter shall have three months time allowed to pay the sum they have under- "wrote for."

Remark. The insurers are obliged to pay the sum insured, *entire*, without any deduction, in case they take the above-mentioned three months to do it in; but the common custom is for them to have two *per cent.* abated in case of prompt payment on losses well proved, for if the proofs are insufficient, the insurers endeavour to take advantage of this circumstance, to pay as little as possible, and the assured must get as much as they can, or wait till they have procured proofs of the loss, in all the forms by law required.

26th Article, "says, that if the gross average does not exceed one *per cent.* the in- "surers shall not be obliged to pay it."

Remark. Averages of two or three *per cent.* happen so often, that the insurers find no advantage in this article, and therefore they have for a long time agreed to sign no policy which does not free them from any average under three *per cent.* as also to be free from the expence of *Jours de Planche*, which are those days a ship is to lie, by custom or charter-party, more than what is necessary to lade or unlade her cargo, and as they are frequently obliged to pay averages upon wools, flax, and hemp, they have for some years past agreed among themselves, not to insure on these three sorts of merchandize, except free of average under ten *per cent.*

Nevertheless, when the insurers are sued, the commissioners of the chamber have no regard to these clauses, but condemn the underwriters to pay all averages that exceed the one *per cent.* in conformity to the ordinance.

27th Article, "frees the insurers from paying the damage or loss, upon things "that corrupt and spoil from their own imperfect nature, when some foreign cause "or mischance has not contributed to it."

Remark. If the grain, fruits, or other such merchandize, happens to heat, or the wine, brandy, oils, and other liquors, are spilt and leaked, without any thing's contributing to it, the damage is the assured's; but if it is occasioned by the sea-water in a storm, or by a shock of the ship against some bank of sand, or any similar cause, the damage is for the insurer's account.

28th Article, "obliges the assured to advertise the insurers of the advices they re- "ceive, of the mischances, embargoes, and damages, which happen to the ships "or effects insured, and that brokers, or other publick persons, do make minutes of such advertisements."

Remark. The assured are so much the more obliged to give this notice to their insurers, as it is they who must pay the damage, in case of a disaster; and if the assured does the least thing unknown to the underwriters, and without their consent or authority, and that what the assured shall have done to prevent a greater ill, turns out the reverse of what he expected, there are many cases in which the insurers would not be obliged for the damage, and others in which they may have room to wrangle a great deal, to lessen their loss.

29th Article, "imports, that this ordinance ought to be understood generally, for "all the insurances which shall be made in this city, as well by the subjects of this "country as by strangers, and upon all sorts of merchandize and effects, going and "coming, both by sea and land; and if they are contrary to the ordinance, they "shall be null and invalid, as is mentioned in the first article."

Remark

Remark. I have already obſerved on the firſt article, that many inſurances were made, which are not intirely conformable to the ordinance; and I have nothing more to add here, but that uſe and cuſtom have introduced many things which are contrary, but he ought to be extremely ſedulous, on making any inſurance contrary to the ordinance, in taking care what inſurers underwrite the policy, and to inſert all ſuch clauſes, as may leave no room for diſpute, or to have them annulled by the chamber of inſurances, or by the other courts of juſtice, in caſe of being obliged to come before them, which will in a great meaſure depend on the ability and forecaſt of the broker.

30th Article, " forbids the commiſſioners of the chamber of aſſurances, their " ſecretary and clerk, and all inſurance brokers, to inſure or to be inſured, directly " or indirectly."

Remark. It may be ſeen, that this prohibition, with reſpect to the commiſſioners and ſecretary, is taken away by the ordinance Numb. 4. But in regard to the ſworn-brokers, as they take an oath not to do any buſineſs for their own account, when they are admitted, they can neither inſure nor be inſured without contravening or breaking their oath; nevertheleſs there are many who have ſhips and parts, which they every day get inſured.

31ſt Article, " orders to puniſh exemplarily all thoſe who ſhall uſe any fraud, miſde- " meanour, or cheat in aſſurances."

Remark. Inſurances were invented and introduced, purely with the deſign to relieve merchants in caſe of a loſs, by ſharing as much as they thought proper to get inſured; therefore, it would be acting very unjuſtly, to aim at gaining or enriching one's ſelf, by making the inſurers loſe, as has happened more than once, by thieves and knaves, who have inſured large ſums on ſhips aboard which they had nothing, or things of a very ſmall value, which they have in concert with the captains procured to be loſt, or by ſome ſuch other tricks: It is therefore of the utmoſt importance to the inſurers, that this article be purſued to the greateſt rigour, and it may be ſeen in the ordinance Numb. VII. Art. 2. that theſe ſorts of caſes are reſerved to be judged by the lords echevins, or ſheriffs.

32d Article, " ordains, that all accidents of inſurance, ſhall be brought in the firſt " inſtance before the commiſſioners of the chamber, which they ſhall judge upon the " footing of the ordinance; and for their employ, they ſhall have jointly with the " ſecretary one-third *per cent.* on the ſums brought for their determination, payable by " the plaintiff."

33d Article, " authorizes the commiſſioners of the chamber to order a delivery of " the money demanded, wholly, or partly, if they think proper, after the verification " of the policies and proofs, and that it appears to them, that the notification of " the loſs to the inſurers was made three months before, permitting thoſe who have " obtained the poſſeſſion, to remain with the money, under a ſufficient ſecurity, to re- " turn it with intereſt, after the rate of twelve *per cent. per ann.* if the commiſſioners " find afterwards that it ought to be returned."

34th Article, " permits an appeal from the ſentence of the commiſſioners, to the " echevins, or ſheriffs, of the city."

35th Article, " ordains, that the execution of the ſentences given by the commiſ- " ſioners, ſhall be performed in the ſame manner, as that of the ſentences given by the " ſeigneurs echevins."

36th, and laſt Article of the ordinance, No. I. " directs thoſe who appeal to the " ſeigneurs echevins, from the ſentence of the commiſſioners, to do it in ten days, " and to give in their articles in ten days after, paying at the firſt audience twelve " guilders as a mulct, if the ſentence of the commiſſioners is confirmed by the ſaid " ſeigneurs."

Remark. I ſhall content myſelf with giving the ſenſe of theſe four laſt articles juſt as they are, without entering into a detail of the caſes that may happen, when obliged to litigate them with the inſurers, becauſe that there is an affinity, which almoſt all differ one from another, in the whole, or in part, and which the ſolicitors, who plead theſe ſort of affairs often, know ſo well how to embroil, that the proceſs may laſt longer than it ought; I ſhall only remark on this ſubject, a paſſage in the treatiſe

treatiſe of averages, wrote by the famous *Quintyn Wytſen*, which is ſo very often cited in juſtice, upon the matter of averages and inſurances, where he ſays, *that the inſurer is regarded by all as a pupil*; that is to ſay, they are protected in juſtice as orphans, and that they are never condemned to the utmoſt rigour, as it may be done in a cauſe between particulars; and it is for this ſame reaſon, that I adviſe all thoſe, who have any difference with the inſurers, to agree it amicably, as well as they can, and avoid a ſuit, as they may be certain they will often get more by a friendly adjuſtment than by a litigation; for the inſurers had rather grant ſomething than be proſecuted, becauſe this makes them decried as wranglers; but it muſt at the ſame time be confeſſed, that if too much is demanded of them under this belief, they rather chooſe to go to law, in which they are not quite wrong.

And as in proceſs of time ſome new caſes have happened, not mentioned in the ordinance, the magiſtrates of this city have, from time to time, made additions and amplifications, and changed thoſe articles which they found not to be eſſential. The additions are contained in the eleven regulations, or ordinances following, which I ſhall mark from No. II. to XII. to follow the order in which they are couched in *the manner of proceeding before the juſtices of Amſterdam*, from whence I have taken them.

No. II.

The 30th of *January*, 1626, " the lords juſtices, willing to amplify the ſecond article of the preceding ordinance, have ordained, that when any one is inſured, and " the inſurer fails and becomes inſolvent, the aſſured may ſet aſide the inſurance, by " his notifying it to him, by a notary and two witneſſes, at the place of his laſt habitation, or to his aſſignee; leaving however the premium, which he cannot reclaim, " and afterwards he may get himſelf inſured by another underwriter, on good and " bad advices."

This amplification was undoubtedly made to prevent the difficulties which might reſult, from what the article 2, where it is ſpoke of, ordains, that the aſſured ſhall run the riſk of $\frac{1}{10}$ for all under 12,000 guilders, according to which, a man, who has got 10,800 guilders inſured on goods worth 12,000, cannot inſure any more; and one of the inſurers happening to fail, and the aſſured being deſirous to get ſome other to underwrite in his room, it would ſeem by the policy, that he ſhould have got himſelf inſured for more than he was permitted, if he had not given it over, in the forms directed in this amplification, which may ſerve him for proof in caſe of need; but as I have mentioned under the ſecond article, that any one might get himſelf inſured entirely, I ſhall only obſerve here, that if an inſurer happens to fail, the aſſured ſhould by no means omit deſiſting from his inſurance, in the forms preſcribed by this amplification.

No. III.

The 9th of *May*, 1614, " our lords of juſtice having examined 17th article of this ordinance, and found that great abuſes have reſulted from it, they thought proper to alter it; and to ordain, that, hereafter, all ſorts of merchandizes and effects whatſoever, ſhall be comprehended under the general name of merchandize or effects, corruptible or incorruptible; but that he that would inſure upon gold, ſilver, coined or uncoined, precious ſtones, or jewels, and ammunition, ſhall be obliged to have it expreſſed in the policy, on penalty of its being nulled."

The 17th article above-mentioned orders to ſpecify in the policy, the merchandizes which are ſubject to periſh through their own nature; which was quite needleſs, becauſe the 27th article of the ſame ordinance exempts the inſurers from paying the damage which ſhall happen without any foreign cauſe; and whether theſe ſorts of merchandize are named in the policy or not, when any damage happens, the queſtion is, to know what cauſe produced it; but with regard to gold, ſilver, jewels, and warlike ſtores, the 17th article remains in its full force.

No.

No. IV.

In *February*, 1600, and in the month of *June* 1601, " our lords of juſtice ordered " that the commiſſioners of the chamber of inſurances, and their ſecretary, might be " inſured."

The 30th article of the firſt ordinance had prohibited it, as may be ſeen in the ſaid article.

No. V.

" This ordinance provides, that all the different accidents which ariſe from averages, " ſhall be carried, in the firſt inſtance, before the commiſſioners of the chamber of in- " ſurances, to be by them regulated and decided, in the manner eſtabliſhed with reſpect " to inſurances, in the laſt articles of the firſt ordinance, and that the execution of the " ſentences ſhall be performed according thereto."

No. VI.

" The firſt part of this ordinance provides, that they ſhall every three days proceed " againſt thoſe, who being cited before the chamber, ſhall not appear; and that for " the firſt, ſecond, third, and fourth fault of non-apearance, they ſhall be condemned upon a ſecond omiſſion, in a mulct of ſix ſtivers; on the third in twelve ſtivers; and " at the fourth, eighteen ſtivers; and that the commiſſioners may condemn or abſolve " for the principal at the fourth neglect; however, without decreeing a ſecurity in " virtue of the ſaid fault, unleſs the commiſſioners ſee, by the deduction of the cauſe, " that it is diſpoſed ſo that he ought to be ordained to give it, inſtead of a definitive ſen- " tence in virtue of the fourth fault.

" The ſecond part ordains, that the decay or ruin of the ſhips that go from hence to " the *Indies*, whether it happens going or coming, ſhall be on account of the inſurers, " unleſs theſe veſſels happen to be employed in an extraordinary manner in the ſaid " *Indies*, for the trade thereof; and that all the merchants ſhall be obliged to place their " merchandize, upon which the averages ought to be regulated, according to their true " value; and that this may be done with the greater honeſty, the effects brought under " contribution ſhall be put into the hands of the commiſſioners, to the end that they " may be enabled to determine equitably."

This ordinance was made the 20th of *June*, 1606, before the eſtabliſhment of the *India* company, and regards more the particulars who traded there, than the company, who never inſure that I know of; but ſince that it charges the inſurers with the periſhing of ſhips in a country ſo diſtant, there is much ſtronger reaſon that they ſhould be anſwerable for the ſame misfortunes in thoſe ſeas which are a great deal nearer, in which the inſurers would certainly be greatly to be pitied, if the commiſſioners had not ſome regard to them, which is left to their diſcretion in the Ordinance, No. XI.

To commit the effects put under contribution of an average into the commiſſioners hands, that they may judge equitably, is very often impoſſible, and when it is otherwiſe the thing would be equally troubleſome to the commiſſioners and merchants; therefore, in ſuch caſes, the commiſſioners themſelves have the ſhips taxed that lie before the city, and order the merchants, who have an intereſt in the lading, to bring in an account of the juſt value of their goods to the chamber, and as this is often done after the goods are ſold, thoſe who have diſpoſed of theirs inſert the produce in their accounts, and thoſe that are ſtill unſold they paſs according to the price current; and, upon the taxation of the ſhip, theſe different accounts of the merchants, and the eſtimation of the damage happened, the commiſſioners regulate the average, and decree the repartition in their ſentence.

No. VII.

This ordinance, made the 14th of *June*, 1607, contains five articles; of which the 1ſt Article ordains, " that the fines proceeding from the faults obtained before the " chamber, ſhall be exacted by the Huiſſier of the chamber; of which he ſhall have " the third for his trouble, and if he cannot recover them, they may be exacted by the " ſerjeant of Monſieur the officer."

2d Article,

2d Article, " directs the commiſſioners to ſend before the lords echevins all thoſe " cauſes of inſurance in which they have found any fraud." This is properly a confirmation and amplification of that which is ſaid in the firſt ordinance, article 31.

3d Article decrees, " that when in any danger, ſome groſs goods ſhall have been " thrown overboard from between decks on ſhips coming from the *Levant*, they ſhall " be brought into an average on ſhip and cargo."

This is a law generally received by all *Europe*, to bring into a groſs average all that is thrown into the ſea, all that is cut away, broken, or loſt in the danger, to ſave that which remains aboard; which makes me believe, that this article was only made to ſtop the mouths of ſome wranglers, who it is probable would maintain, that what is put between decks, being thrown overboard in the danger, ought not to be brought into an average.

4th Article, " authorizes the commiſſioners to condemn the parties, in all or half " of the expences, or to decide them as they ſhall think proper."

5th Article, " enjoins the commiſſioners not to carry to the inſurer's account, when " they regulate any average, only what they ſhall find ought to be carried to " averages."

To underſtand this article aright, it muſt be obſerved that averages are frequently regulated in one manner between the proprietors of the ſhip and thoſe intereſted in the cargo, and in a different one, with regard to the inſurers, who are not obliged generally to pay all that is brought into an average upon ſhip and goods, but only certain articles, according to the circumſtances of the caſe, which would be too long to deduce here.

No. VIII.

This ordinance alſo contains five articles, of which the

1ſt Article, " decrees, that all the premiums of inſurance, which do not exceed 7 " *per cent.* ſhall be paid in ready money; without deducting them from the damage in " theſe cauſes, which ſhall be brought before the chamber, but they ſhall be counted " and held as paid."

2d Article, " ordains, that the premiums exceeding 7 *per cent.* ſhall be paid in ſix " months after ſigning the policy; but if the premiums on going and coming amount " to more than the 7 *per cent.* and to 14 *per cent.* incluſive, one half ſhall be paid down, " and the other half in ſix months after, with the intereſt of 12 *per cent. per ann.* after " the expiration of the ſaid ſix months, to the time of payment."

In obedience to the firſt of theſe articles, or both of them, the inſurers never ſign a policy, that they do not inſert at the ſame time, that they have received the premium, although they do not receive it till two or three months after, and ſometimes never, becauſe they have an open account with every broker, and if a loſs happens, they draw upon him, without having enjoyed the premiums. It is true they may recover of him directly, and it were to be wiſhed, for their ſakes, that they gave leſs credit to ſome brokers, who uſe the premiums to pay every thing elſe but them; if they gave ſo much leſs credit to the brokers, the inſurers would not ſuffer, as they often do, when any one of the former becomes inſolvent; for if the merchants, by employing the brokers, give them an opportunity of gaining their brokerage, they are only anſwerable to the inſurers for the premiums; and if thoſe were paid in ready money, the brokers would not be expoſed to this riſk.

In regard to the premiums in going and coming, the cuſtom obſerved for a long time, has been in the ſame manner as above, but the broker will not engage with the inſurers only for the premium out: And when the ſhip is arrived, or is upon her way home, the inſurer aſſigns the premium of her return on the aſſured; but as it frequently happens, that ſome of the aſſured fail during the interval of the voyage, by which the underwriters loſe the premium on the ſhip's return, it is now ſome years ſince they have obliged the brokers to be anſwerable for both, in which I think they have acted very prudently.

3d Article, " ordains, that when the chamber of aſſurances has made a repartition " of the average or damage, the inſurers ſhall be obliged to pay it directly, and in " default thereof, they ſhall pay the aſſured an intereſt on the ſum in which they have

" been

" been condemned, after the rate of 12 *per cent. per ann.* to be reckoned from the day " the repartition is made, till the time of its diſcharge."

This caſe occurs ſo rarely, that I have never ſeen an example of it; but on the contrary, a loſs or an average is no ſooner regulated by the chamber, than the inſurers are the firſt who deſire to pay, unleſs they think themſelves unjuſtly dealt by, and have an intent to appeal.

4th Article, " directs the commiſſioners not to make any repartition of total loſſes, " till the three months of abandoning be expired, according to the 25th article of the " firſt ordinance."

I have remarked upon the ſaid 25th article, that in ſuch caſe, the inſurers ought to pay the entire loſs, but in agreeing it amicably, they only pay 98 *per cent.* which is better both for one and the other, than to go to law, for many reaſons.

5th Article, " orders that the brokerage on inſurances ſhall not exceed $\frac{1}{4}$ *per cent.* as " well on going and coming, as on going or coming only; to be paid half by the " inſurers, and the other half by the aſſured."

The cuſtom is, that the inſurers only pay the brokerage at $\frac{1}{4}$ either going or coming, and $\frac{1}{2}$ *per cent.* outwards and homewards; and if this is not agreed to, as the brokerage for going and coming ſingly is $\frac{1}{4}$ *per cent.* the brokers may with reaſon, firſt make the inſurance outwards, and ſome days after make that homeward, in order to get double brokerage; and I do not doubt of their having done ſo, ſince the making of this ordinance, *&c.*

No. IX.

It is ordained by this amplification of the preceding ordinance, No. VIII. " that all " the premiums of inſurance, at whatever *per cent.* they may be, and let them be what " they will, ſhall be paid immediately on ſigning the policy, under penalty of their " being null; provided that on thoſe which are made for going and coming, the premiums for going ſhall be paid directly, and the premiums for returning ſhall be " paid on the arrival of the veſſels; and of all the inſurances which are made by the " month, the premiums ſhall be paid down for as many months as ſhall be ſtipulated in " the policy."

No. X.

As the foregoing ordinance does not very clearly explain itſelf in ſaying, that the premiums on the homeward bound voyage ſhall be paid on the ſhip's arrival, this article is added, and imports, *that the premiums on her coming back, ſhall be paid when the veſſel ſhall be returned, and the voyage finiſhed.*

It may be ſeen by theſe two articles, what I have ſaid under the ſecond article of No. VIII.

No. XI.

In reply to the advice which the commiſſioners of the chamber requeſted of the burgomaſters, how they ſhould regulate the damage upon woad, ſugar, and other merchandizes, which came from the Azores iſlands: as a very great difference is found in the price, between thoſe bought with ready money, and thoſe taken in barter; and alſo upon what the ſaid commiſſioners repreſent, that in long voyages, where the aſſured gain largely, the veſſels decay conſiderably, and if they are loſt the inſurers pay a great deal more than the ſhips would have ſold for, if they had arrived in ſafety.

" Our lords of juſtice ordained, that the woad ſhould be reckoned, till further order, " upon the footing of 800 *rees* the quintal, unleſs the concerned can prove in eight " months, that the woad was bought in the ſaid iſles, at a higher or lower price; and " with reſpect to ſugars and other merchandize, the commiſſioners may value them " as they ſhall think proper."

" And touching the ſhips, which, by the length of their voyages, are worn out, " worm-eaten, or become unnavigable, the commiſſioners were authoriſed to act " according to their diſcretion."

It is very juſt to have regard to the price of the goods which are to contribute to an average, when the calculation is to be made, more eſpecially when ſome part of them have been taken in barter, and the other paid for with ready-money; in which caſe thoſe that are received in barter, would coſt a good deal more if paſſed at the price they were taken at in barter, than thoſe purchaſed with ready-money, and would not however be any thing better, and notwithſtanding they would pay conſiderably more than they ought towards the average. *For example*, a quintal of Woad ſhall have been taken in barter for 1200 *Rees*, and a quintal of the ſame bought for 600, with ready-money; and if the average is regulated on the footing of theſe two purchaſes, the quintal taken in exchange will pay double the average that the quintal bought with ready money will, which would be viſibly contrary to reaſon, and to the ordinance No. VI. which directs, that things ſhould be put at their true value.

In reſpect to the decay of ſhips, it is certainly very equitable, that it ſhould be regulated, as well in the regulation of loſſes as in that of averages; for it is certain, that on many occaſions the inſurers loſe, and pay the damage which happens to ſhips, whilſt the proprietors gain a great deal above it.

No. XII.

This amplification decrees. " that henceforward any abandon, regiſtering, or au-
" thorization, in matters of inſurance, ſhall not be done but by the ſecretary or huiſſier of
" the chamber of inſurances, who are ſufficiently authorized for it, by this ordi-
" nance, which prohibits all notaries, brokers, and other perſons to undertake the
" doing any act, under penalty of its being null."

If the aſſured judge that the inſurers have any room to make a diſpute, they ought not to fail making the abandon, regiſtering, or authorization, as it is ordered here above, becauſe all that they get done by their brokers is null and invalid, if the affair comes before the chamber, and that theſe pieces muſt abſolutely be drawn up there, and ſigned by the huiſſier to be valid.

The 5th of *March*, 1688, the following ordinance was publiſhed:

" Thoſe who would get inſurance made on ſhips or effects already departed from the
" place of their lading, ſhall be obliged to declare it on the policy, and to note the time
" of their departure, except they are ignorant of it; and if they are ſo, they are ex-
" preſsly to declare it in the policies, on penalty of its being null."

As this article has a relation to or affinity with the articles 6, 20, or 21, of the firſt ordinance, reference may be made to what I have ſaid under the 6th.

The ſame day, 5th of March, 1688, *the ſubſequent order was alſo publiſhed:*

The lords of juſtice having been adviſed, as well by many merchants as inſurers, that divers changes were daily made in the print of policies, and that almoſt every broker added ſome novelty, which obliged both the merchants and inſurers to read, as well what was printed as wrote in them, and that this was a troubleſome practice, by reaſon of the many affairs they had to tranſact at the bourſe and elſewhere, from whence proceeded a great number of frauds, bad tricks, *&c.* the which the ſaid lords willing to prevent, have enacted and ordained, that henceforward no one ſhall print or offer any policy which does not contain, word for word, the ſame as thoſe that follow; and they muſt be marked by the ſecretary of the chamber of inſurances, who ſhall have three ſtivers as his due for each; and no policy ſhall be made which is not marked by him, in want of which, they ſhall be invalid; and the brokers who offer any policies, with other contents than what is in the ſubſequent forms, ſhall pay, for each, fifty guilders mulct.

A Form of the licenſed Policies upon Ships.

WE the underwriters do aſſure you, Mr. of any other to whom it may appertain, in the whole, or in part, friend or enemy without any exception, *viz.* every one for the ſum here ſubſcribed, of *(in this blank is inſerted the voyage the ſhip is to make)*

upon the body and tackle of the ſhip, which God preſerve, with her guns, ammunition, apparel, and appearances belonging

belonging to the ſaid or to any other, called
of which
is captain
or any other who may be put in his place,
the riſk, perils, and adventures which we take upon us, from the day and hour, that
until the time,
that the ſaid ſhip, ſhall be arrived as above,
with her guns, ammunition, apparel, and appurtenances, and entirely unladen; and the ſaid ſhip may go forward, retreat, turn, and go about to the right, left, and on every ſide, in the manner that the captain or captains may think proper, for the benefit and advantage of the ſaid voyage; the above-mentioned dangers, conſiſting in all perils of the ſea, of ſtorms, fire, and winds, arreſt of friends or enemies, detention of kings, queens, princes, lords and communities, letters of marque and counter-marque, imprudence of captains, or barretry of the mariners, and in all other perils and adventures which can happen to the ſaid ſhip, of whatſoever ſorts they may be, foreſeen or unforeſeen, ordinary or extraordinary, without excepting any one, provided they happen without any deſign, or knowledge of the aſſured; we put ourſelves in all the aforeſaid caſes in your place, to pay you the aſſured, or to your agent, all the damage that you ſhall have ſuffered, *viz.* each one, in proportion to the ſum he ſhall have underwrote, as well the firſt as the laſt inſurer, and that within one month after we ſhall have been duly adviſed of the loſs or damage; and in that caſe, we give to you the aſſured, and to all others, a full power, whether it turns to our advantage or to our loſs, to lend a hand to ſave the ſhip and its appurtenances, to ſell it, and to diſtribute the money, if the caſe requires it, without demanding either our conſent or permiſſion: We alſo paying the charges, which ſhall be occaſioned in this affair, and likewiſe the damage which ſhall have happened, whether any thing is ſaved or not; and, in reſpect of the account of charges, a certificate ſhall be added to the oath of him that furniſhed them, without any contradiction; provided that there ſhall be paid us in ready money, for the price of this aſſurance, *per cent.*
engaging for this effect, and ſubmitting our perſons and goods preſent, and to come, according to law; renouncing, as men of honour, all chicanes and exceptions, which may contradict the preſent. So done at *Amſterdam*, &c.

N. B. *The policies on goods are the ſame with the above, only varying the terms, as in the* Engliſh *one, therefore I omit the tranſlation.*

A new Amplification of the Ordinance of the Chamber of Aſſurances, and Averages, of the City of Amſterdam.

THE lords of juſtice of the city of *Amſterdam*, having ſeen and examined the requeſt of many conſiderable merchants of the ſaid city, preſented to them to-day, beſeeching that there may be ſome alteration and redreſs made in matter of inſurances; and after having heard the advice of the commiſſioners of the chamber of inſurances and averages, have thought proper to enact and ordain, as they do by theſe preſents;

1ſt Article, "that henceforward inſurance may be made on the body and tackle of "ſhips for ſeven-eighths of their true value; however, without permiſſion to make "any on their freight, powder, ball, victuals, or ſuch like things which are conſumed; "and the aſſured ſhall be obliged to run riſk of the one-eighth, as well for what is "above, as under two thouſand *livres de gros*, derogating and altering in this reſpect "the 10th article of the ordinance of the chamber of inſurances."

The 10th article of the firſt ordinance altered by this, forbids the inſuring ſhips for above two-thirds of their value, which was ſufficient to diſcourage all thoſe who ſhould have a deſign to build ſhips, it obliging them to run the riſk of one-third of their value, which might not ſuit every one; ſo that it is with reaſon they have changed the ſaid 10th article of which we are ſpeaking; and it is even very much wiſhed, that they had not obliged the owners of ſhips by this article, to run the riſk of the one-eighth; for, beſides its cauſing many diſputes, there is not naturally any neceſſity to oblige a man to run a riſk, which an inſurer would take on him for the premium he receives. There is even, if I may be permitted to ſay ſo, a wide door opened to chicanery in this ampli-

amplification, which only ſpeaks of the body of the ſhip, without making mention of the apparel and appurtenances, which are very often worth as much, or half as much, as the body of the ſhip; I, however, very well know, that when the commiſſioners of the chamber have a ſhip taxed, it is taxed with all its apparel and appurtenances, and without contradiction from the inſurers; but I do not know what would happen if ſome one amongſt them would ſtick to the letter of the ordinance, which only gives commiſſion to inſure the body; it may be ſaid, that the ſhip cannot go to ſea without ſails, maſts, *&c.* ſo that her apparel and appurtenances being abſolutely neceſſary to perform the voyage, they may be, and effectually are, comprehended with the body of the ſhip; however, this would not ſhut the mouths of ſome wranglers, if they were in ſuch a caſe. But not to extend my criticiſm any farther, I ſhall only ſay, that when an inſurance is made on the body of a ſhip, it is very neceſſary to value it in the policy, and to inſert that it is with all its appurtenances and dependencies, and ſuch other clauſes as an expert broker ſhould find *à propos* to put in it, according to the caſes and circumſtances.

2d Article of this amplification ſays, "that in like manner it ſhall be permitted to "inſure the ſingle ranſom, or redemption of captains and ſailors, who run a riſk of "being taken by corſairs; and that upon policies, of which the plan ſhall be given "herewith, the which ought to be marked by the ſecretary of the chamber, who ſhall "have three ſtivers for each, as for other policies; upon penalty, that if they are not "marked by the ſaid ſecretary, they ſhall not be valid, and that the brokers who "ſhall make any policies in a different manner ſhall pay fifty guilders mulct for "each, *&*."

The 24th Article of the firſt ordinance, prohibits the making inſurance on any lives whatſoever; and many people confound liberty with life, imagining that inſuring the one was not more lawful than the other, which occaſioned many difficulties between the owners of ſhips, and their captains bound to the *Mediterranean* and the adjacent parts, where they run the riſk of being taken by the *Turks*, when at war with them, and it was undoubtedly for that, that this article was made; and on the leaſt rupture that we now have with any one of the ſtates of *Barbary*, the captains deſigned for the *Mediterranean* will by no means ſail, till their owners have inſured 3 or 4000 guilders upon their liberty, in order to redeem them with this money, in caſe they are ſo unfortunate as to be taken.

3d Article of the ſaid amplification, "decrees, that any inſurance made upon money "given *a la groſſe*, a term uſed in *Holland* for lending money at a large intereſt like "bottomry, upon goods, ſhall not be valid, unleſs it be expreſsly mentioned by all "the bills of lading of the goods, how the money was taken up, with the date of the "day and the place, from whom it was taken, and to whom it was delivered, "and for whoſe account; but the aſſurance being made from a place, where no "bill of lading was ſigned, it muſt be proved by the contract *de groſſe*, or bottomry, "*&c.*"

The 4th and 5th Articles, authorize the commiſſioners to condemn, from the ſecond non-appearance, thoſe whom the inſurers have cited before the chamber for the payment of premiums, and to proceed to other cauſes every two days, and to condemn upon the third default.

The Form of a Policy of Inſurance upon the Liberty of a Perſon.

WE, the underwriters, inſure you or to whom it may appertain, *viz.* Each for the ſum here underſigned, to on condition to go every way, during the whole voyage, and with liberty to touch in all places and in all countries in the way; to advance, retreat, get into port, unlade and lade, at the will of the captain or mate, whether it is with the liking and conſent of the aſſured or his deputy or not; and that upon the body and perſon of bound for upon the ſhip, which God preſerve, called commanded by captain and in caſe that the ſaid ſhip ſhould happen to be loſt, and not accompliſh her voyage, we run the ſame riſk on the ſhip or ſhips upon which the ſaid may embark, to purſue and finiſh his aforeſaid voyage,

voyage, be it either by ſea or land; and we only run the riſk of his being taken, by any nation whatſoever, whether *Turk*, *Moor*, or *Barbarian*, or other infidel pirates, from whom in caſe that the ſaid happens to be taken, and ranſomed, which God avert, we promiſe to pay immediately to the aſſured, or to the bearer of theſe preſents, without any abatement, each the ſum by us inſured for his redemption, with the other charges that this affair may occaſion; and that as ſoon as the advice ſhall be received, and that it ſhall appear to us that he is releaſed, or his ranſom paid, and that the bills of exchange have been accepted; but the ſums by us inſured muſt be employed only in his ranſom and concurrent expences, and for nothing elſe; and for the accompliſhment of the above, we engage our perſons and effects, preſent and to come, ſubmitting them to all laws and tribunals of juſtice, the whole ſincerely without fraud or deceit; and we have agreed for the premium.

So done in *Amſterdam*, &c.

Policies of inſurance in *France*, are generally drawn up in the regiſtry office of inſurance, in thoſe places where one is eſtabliſhed; and in thoſe places where there are none, the policies may be made either before a notary publick, or under a private firm.

In foreign places where *French* conſuls are ſettled, the policies of inſurance may be entered in the Chancery of the conſulate, before two witneſſes; and all theſe policies mention the name and place of abode of the inſured, his condition, whether proprietor or agent, and the goods or effects on which the inſurance is made: They muſt likewiſe contain the name of the ſhip and maſter, the place from whence the goods are or muſt be laded, of the haven or port from whence the ſhip is to ſail, or ſhall have ſailed, of the ports where ſhe is to lade and unlade, and of all thoſe where ſhe is to touch: They muſt alſo expreſs the time when the riſks are to begin and finiſh, the ſums that are inſured, the premium given, the ſubmiſſion of the contracting parties to arbitration in caſe of diſpute, and all other clauſes in general on which they are agreed, according to the uſe and cuſtoms of the ſea; about all which his moſt chriſtian majeſty publiſhed an ordinance in the month of *Auguſt*, 1681, where, at *Titre* 6, *du Livre* 3, every part of inſurance is fully directed. D. de C. Pag. 219. Word ASSURANCE.

Beſides the inſurances we have hitherto mentioned, others are made in *France*, called ſecret or anonymous ones, which are performed by correſpondence with foreigners, even in time of war.

It is inſerted in the policies of this ſort of inſurance, that it is for a friend's account, whoſoever he may be, without naming the perſon; and in caſe the ſhip or merchandizes ſo inſured happen to be loſt, the aſſured muſt notify it, and his abandoning the inſurance, by an act in form, either by the regiſter, a notary, or bailiff, demanding payment of the ſums inſured, in conſequence of his relinquiſhing, in the time agreed by the policy.

Inſurances are made in many parts of *France*, particularly in moſt of the maritime towns; and in the beginning of the year 1770, a chamber of inſurance was eſtabliſhed at *Paris*, with a fund of twelve millions of livres, in which ſome alterations were made about ten months after; but as the articles in their policies differ very little from the *Dutch*, to avoid repetitions, I ſhall not enlarge on them.

An office for inſurances was likewiſe eſtabliſhed about the latter end of the ſame year at *Stockholm*; and another about ſix months after at *Naples*, with a capital of 100,000 crowns. And a company has been long ſettled at *Copenhagen* for this purpoſe; beſides which, large inſurances are made in *Norway*, and the terms generally the ſame as in *Holland*.

All policies muſt be made on ſtamped paper, and no inſurance permitted on life, wages, proviſion, ammunition, or materials; only on ſhip and goods, and on theſe no more than nine-tenths of their real value.

The inſurers pay no average, on demurrage, or loſſes under 3 *per cent.* nor on wool, hemp, flax, ſugar, and ſtock-fiſh under 10 *per cent.* And the laws are ſo rigorous, that if the inſurance is made for above nine-tenths of the real value, as afore-mentioned, the premium is ſunk, and the perpetrators ſuffer death.

When

When a policy on goods is ſigned, the underwriters are anſwerable for all damages they may receive, from the time of their carrying from the ſhore, until their being duly delivered on ſhore again; and if credit is given on the premium, it bears half *per cent.* intereſt *per* month.

On a loſs of ſhip or goods, the aſſured may have it notified to the inſurers, with full proofs; and if the latter do not pay the loſs within three months, he muſt pay the aſſured half *per cent.* monthly, from the time of the loſs being notified to him until its diſcharge.

A ſhip bound to any part of *Europe*, and no news heard of her within a year and a day, the inſurance is due; and if the voyage is to any other part of the world, two years are allowed; and it is to be noted that a year and a day, in law, is underſtood to be a year and ſix weeks.

If the voyage is altered, and premium returned, half *per cent.* is allowed the underwriters, as in other parts; and the inſurance in this country is void, and the capital confiſcate, if not made on ſtamped paper.

Venice, *Leghorn*, *Genoa*, *Piſa*, *Hamburgh*, and many other maritime cities, have their underwriters, and pretty conſiderable inſurances are ſometimes made there; but thoſe I have before mentioned are the principal places where large ſums are underwrote for, with the greateſt ſecurity.

Of Arbitrators, Arbitraments, Arbitration Bonds, and Awards.

AN ARBITRATOR is an extraordinary private judge, between party and party, choſen by their mutual conſent, to determine controverſies between them.

And he is ſo called either from *arbitrium*, free will, as ſome derive it; or becauſe he has an arbitrary power, as is ſuppoſed by others; for if arbitrators obſerve the ſubmiſſion, and keep within due bounds, their ſentences are definitive, from which there lies no appeal.

The power of arbitrators is to be regulated by the contracts between the parties, as to what concerns the differences which they are to determine, and whatever they decree beyond that is of no effect.

The award of *arbitrators* is definitive, and, being choſen by the parties, they are not tied to ſuch formalities of law as judges in other caſes are, and yet they have as great power as other judges to determine the matters in variance; but their determination muſt be certain, and it is to be according to the expreſs condition of the bond, by which the parties ſubmit themſelves to their judgment.

After a definitive ſentence is given, the functions of *arbitrators* ceaſe, and they have not power to retract or alter it.

No matters wherein the publick is concerned, or beſides thoſe of a private nature, which regard property between perſon and perſon, can be ſubmitted to the deciſion of *arbitrators*. The differences ariſing between merchants, relating to their commerce, and between parties, in relation to their partnerſhips; and alſo accounts of guardianſhips, and other adminiſtrations, are proper ſubjects for arbitration. Therefore all articles of partnerſhip ſhould contain a clauſe, by which the partners bind themſelves to ſubmit to *arbitrators* in the diſputes that may ariſe between them. And if the ſame was done in the contract, and policies of aſſurance, it might prevent many ſuits at law.

It

It has been a cuſtom to chuſe two, one by each of the contending parties, with a liberty for them to chooſe an *umpire* in caſe of diſagreement; but as this method has on many occaſions expoſed the *arbitrators* to ſome diſguſts, from thoſe whoſe differences they were labouring to reconcile, it has been a practice for ſome time paſt to nominate three in the bond, by which means their different opinions remain ſecret, and conſequently unknown to the concerned, who are too apt ungenerouſly to reflect on a determination, which will naturally differ from the opinion at leaſt of one of the parties, and excite in an uncandid manner a cenſure, where at leaſt their thanks are due.

The Chancery will not give relief againſt the award of the *arbitrators*, except it be for corruption, &c. and where their award is not ſtrictly binding by the rules of law, the court of equity can decree a performance. *Chanc.* Rep. 279. 1 *Vern.* 24.

When the *arbitrators* make an award upon one day, they cannot make another between the parties on any other day; nor can they do it part at one time and part at another, although the times are within the ſubmiſſion. 26 *Hen.* VI. 52. 39 *Hen.* VI. 12.

Though the *arbitrators* may agree upon a thing one day, and on another thing at another time, and at laſt make an award of the whole. 47 *Edw.* III. 21.

Arbitrators are to award what is equal between the parties, and not on one ſide only, and the performance of it muſt be lawful and poſſible; and the award muſt be final. 2 Mod. Entr. *Eng.* 262. 1 Inſt. 201. 1 *Rol. Abr.* 242.

If the arbitrators make an award of money to be paid to a ſtranger, &c. unleſs the parties have benefit by it, it will be void. 2 *Saund.* 122. 2 *Lill.* 169.

And a party is not to be made a judge in his own cauſe by award. 1 *Salk.* 71.

For it is a general rule in equity, that when it appears that any one of the *arbitrators* was any way *intereſted* in the matters in controverſy referred to them, the award is to be ſet aſide.

Where a thing is to be done on payment of money, a tender of the money is as much as an actual payment. *Mod.* Caſ. 33.

Action of debt may be brought for money adjudged to be paid by *arbitrators*, declaring on the award; and alſo action of debt upon the bond, for not performing the award. *Brownl.* 55.

When there is but one *arbitrator*, which happens where the matter is referred to two, or they cannot agree, but leave it to be determined by a third perſon, it is called an *umpirage*. 8 Rep. 98.

But the *arbitrators* are to refuſe, and declare they will make no award before the *umpire* ſhall proceed; though an *umpire*'s award ſhall be good, where the arbitrators make a void award, which is no award. 1 *Lil.* Abr. 170.

It is ſaid an umpirage cannot be made till the *arbitrator*'s time is out, and if any other power be given to the *umpire*, it is not good; for two perſons cannot have a ſeveral juriſdiction at one time. 1 *Mod.* Rep. 15.

But this ſeems to be contradicted by the practice afore-mentioned, of nominating three *arbitrators* in the bond, except the diſtinction conſiſts in ſounds only, as neither of the three is termed an *umpire*.

An *arbitration* is generally an effect of moderation in the contending parties, who think it more ſafe to refer the matter in diſpute to the determination of friends, than to venture a trial at law, more eſpecially as the one is coſtly, and the other tranſacted *gratis*; and though there is no particular obligation to oblige parties in *England* to refer their differences to *arbitrators*, as is the cuſtom in *France*, yet our ſtatutes recommend theſe references to the ſubjects, and more particularly to merchants and traders, as an uſeful expedient to end their diſputes with the greater eaſe and expedition.

The *civilians* make a difference between *arbiter* and *arbitrator*; an *arbiter* being tied to proceed and judge according to law, mingled with equity; but an *arbitrator* is wholly at his own diſcretion, without ſolemnity of proceſs, or courſe of judgment, to hear and determine the controverſy referred to him, ſo as it be *juxtà arbitrium boni viri*. *Cowel.*

Arbitrators ſhould give their award without entering into particulars, or aſſigning their reaſons for it, as this might expoſe them to a Chancery ſuit from a diſſatisfied party,

party, and it ſhould be in writing, and within the time limited by the *arbitration* bonds.

There ſhould be appointed by the award ſome reciprocal act, to be done by each party to the other, which the law requireth to be *quid pro quo*, although it be never ſo ſmall, and reciprocal acquittances ſhould be directed, either general or particular ones, according as the nature of the deciſion ſhall require.

The *arbitrators* are not to award any thing, whereby any matter already determined by a decree in *Chancery*, or a judgment at *common law*, or any ſentence judicially given in the cauſe, be infringed or meddled with; for ſentences of judicial courts of record are always of a higher nature than *arbitrators* awards, and juſtly challenge both obedience and reſpect; though *civilians* themſelves do frequently call merchants into their aſſiſtance, when the matter in diſpute is relative to trade, and ſometimes recommend the deciſion of a mercantile point to a trader, after they have long and curiouſly debated it, without bringing it to a concluſion.

ARBITRAMENT (in Latin *arbitrium*) is the ſentence or determination, pronounced by *arbitrators*, and publiſhed when they have heard all parties, and *this* is either *general*, of actions, demands, quarrels, *&c.* or *ſpecial*, of ſome certain matters in controverſy; it may be alſo abſolute or conditional. 8 *Rep.* 98.

To every *arbitrament*, five things are incident, *viz.* Firſt, Matter of Controverſy. Secondly, Submiſſion. Thirdly, Parties to the Submiſſion. Fourthly, Arbitrators. And, Fifthly, giving up the *arbitrament*. *Hard.* 44.

Arbitrators cannot refer *arbitraments* to others, if the ſubmiſſion be not ſo; but an *arbitrament* that one ſhall releaſe to another, by advice of a certain perſon, is good, becauſe it is a reference only for the execution of it. *Jenk. Cent.* 129.

Submiſſions to *arbitraments* are uſually by bond, and the parties who bind themſelves, are obliged to take notice of the award, at their peril; but things relating to a freehold, debts due on bond, or on certain contract, criminal offences, *&c.* are not *arbitrable*. *Danv.* Abr. 513. 9 Rep. 78. 1 *Roll.* Abr. 244, 342.

For ending ſuits by *arbitrament*, the following act is the only one made in any late reign, *viz.*

After the 11th of *May* 1698, all merchants and traders, and others deſiring to end any controverſy, ſuit, or quarrel, for which there is no other remedy, but by a perſonal action or ſuit in equity, by *arbitrament*, may agree, that their ſubmiſſion of the ſuit to the award, or umpirage, of any perſon or perſons, ſhall be made a rule of any of his majeſty's courts of record, which the parties ſhall chooſe, and may inſert ſuch their agreement in their ſubmiſſion, or the condition of the bond of promiſe; and upon producing an *affidavit* of ſuch agreement, and upon reading and filing ſuch affidavit in the court ſo choſen, the ſame may be entered of record in ſuch court, and a rule of court ſhall be thereupon made that the parties ſhall ſubmit to, and finally be concluded by ſuch *arbitration* or *umpirage*: And in caſe of diſobedience thereto, the party neglecting, or refuſing, ſhall be ſubject to all the penalties of contemning a rule of court, and proceſs ſhall iſſue accordingly, which ſhall not be ſtopped or delayed by any order, *&c.* of any other court, either of law or equity, unleſs it appear on oath, that the *arbitrators* or *umpire* miſbehaved themſelves, and that ſuch award was corruptly or unduly procured 9 and 10 *Will.* III. C. 15. Sect. 1.

Any arbitration or umpirage, procured by corruption or undue means, ſhall be void, and ſet aſide by any court of law or equity, ſo as ſuch corruption or undue practice be complained of, in the court where the rule is made for ſuch *arbitration*, before the laſt day of the next term, after ſuch *arbitration* made and publiſhed to the parties. Sect. 2.

In conſequence of this ſtatute, it is now become a conſiderable part of the buſineſs of the ſuperior courts, to ſet aſide ſuch awards as are partially or illegally made; or to enforce their execution when legal, by the ſame proceſs of contempt, as is awarded for diſobedience to ſuch rules and orders as are iſſued by the courts themſelves. *Blackſtone's Comment. Vol. III.*

An ARBITRATION BOND.

KNOW ALL MEN by these presents, that I *A. B.* of the parish, &c. in the county, &c. merchant, am held and firmly obliged to *C. D.* of, &c. in the county aforesaid, esq. in ——— pounds of good and lawful money of *Great-Britain*, to be paid to the said *C. D.* or his certain attorney, his executors, administrators, or assigns, to which payment, well and truly to be made, I oblige myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal, dated at on the day of in the 24th year of the reign of our sovereign lord king *George* II. and in the year of our Lord God, one thousand seven hundred and fifty-one.

The condition of this obligation is such, that if the above bound *A. B.* heirs, executors, and administrators, for his and their parts, and behalfs, do in all things well and truly stand to, obey, abide by, perform, fulfil, and keep the award, order, arbitrament, final end, and determination of *E. F.* and *G. H.* arbitrators, indifferently named, elected, and chosen, as well on the part and behalf of the above bounden *A. B.* as of the above named *C. D.* to arbitrate, award, order, judge, and determine, of and concerning all, and all manner of action and actions, cause aud causes of actions, suits, bills, bonds, specialties, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, at any time or times, heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by or between the said parties, so as the said award be made, and given up in writing, under their hands and seals, ready to be delivered to the said parties on or before the next ensuing the date above-mentioned: But if the said arbitrators do not make such their award of, and concerning the premises by the time aforesaid, that then if the said *A. B.* his heirs, executors, and administrators, for his and their part and behalf, do in all things well and truly stand to, obey, abide by, perform, fulfil and keep the award, order, arbitrament, umpirage, final end, and determination of *J. K.* umpire, indifferently chosen between the said parties, of, and concerning the premises, so as the said umpirage do make his award or umpire of, and concerning the premises, and deliver the same in writing under his hand and seal, to the said parties, on or before the next ensuing the date aboveſaid, then this obligation to be void, or otherwise to be, and remain in full force and virtue.

A. B.

Signed, sealed, and delivered,
in the presence of
L. M.
N. O.

Note, if there is no umpire, the latter part must be omitted, *viz.* from, *but if the said arbitrators*, &c.

Though I have before observed, it is now customary to choose three arbitrators, and have them nominated in the bonds.

The aforesaid bond must be mutual between the parties, and the following clause may be added at the end of the condition, as the agreement mentioned in the preceding act of parliament, *viz.*

And the above-mentioned *A. B.* doth agree and desire, that this his submission to the award above-mentioned, be made rule of his majesty's court of *King's-Bench, or any other court of record*, pursuant to the late act of parliament for this purpose provided, *and the like for the other party submitted to such award.*

AWARD is the judgment and arbitration of one or more persons, at the request of two parties who are at variance, for ending the matter in dispute, without publick authority; and may be called an *award*, because it is imposed on both parties to be observed by them *dictum, quod ad custodiendum, seu observandum, partibus, imponitur. Spelm.*

An *award* may be by word or in writing, but it is usually given in the latter, and must be exactly according to the submission. If an *award* be according to the sub-

mission

miſſion by bond, though it is void in law, if it be not obſerved, the obligation will be forfeited. 1 *Danv.* Abr. 515.

Where arbitrators *award* a thing againſt law, it is void; if more is *awarded* than ſubmitted, the award will be void; but when an *award* ſeems to extend to more than in the ſubmiſſion, the words *de & ſuper præmiſſis*, reſtrain it to the thing ſubmitted. *Cro. Eliz.* 861.

An *award* may be void in ſome part, and good in another part, if it makes an end of all the differences ſubmitted; and if an *award* be good in part, and void in part, the good ſhall be performed. 10 Rep. 31. 2 *Saund* 293.

An *award* without a deed of ſubmiſſion will be good, in bar of a treſpaſs. *Danv.* 548.

But the delivery of the *award* in writing, under hand and ſeal, *&c* muſt be pleaded, and be exactly replied to by the plaintiff, in action of debt on an *award*, or it will be ill on demurrer. *Dyer*, 243. 2 *Mod.* 77, 78. 269.

The ſubmiſſion to an *award* may be by bond, covenant, or by an *aſſumpſit* or promiſe; or without all this, by a bare agreement, to refer the matter to ſuch a perſon or perſons. 10 Rep. 131. *Dyer*, 270.

A huſband may ſubmit to an *award*, for himſelf and his wife, for her goods and chattles, to bind her; but an infant may not make any ſubmiſſion to an *award*, or any other for him, for it will be void. *Plowd.* 189.

If ſeveral perſons do a wrong to a man, and one of theſe, and he to whom the wrong is done, ſubmit to an *award*; the other perſons, who were no parties to the ſubmiſſion, may take advantage of it, to extinguiſh the wrong. 7 *H.* IV. 31.

And where the *award* of recompence for a wrong done is performed, that wrong is altogether determined; alſo the *award* of a perſonal chattel doth alter the property of it, and give it to the party to whom *awarded*, that he may have *detinue* for it. *Dyer*, 183.

A ſubmiſſion is of all actions and demands, *&c* though there be but one cauſe or matter between them; an *award* may be made for this: And where two things are ſubmitted, and the *award* but one, it is good, if the arbitrators have no further notice of the other; though if it be of three things, or ſome particulars with a general clauſe of all other matters, in that caſe they muſt make the *award* for the things particularly named, without any other notice given. *Dyer*, 216. 2 *Cro.* 130. *Godb.* 146.

If the ſubmiſſion be by divers perſons, and the arbitrators *award* between ſome of them only, this is good, but if a ſubmiſſion is of certain things in ſpecial, with a *proviſo* in the condition, that the *award* be made of the premiſſes, *&c.* by ſuch a day, there the *award* muſt be made of all, or it will be void. 8 Rep. 79 *Hob.* 49.

An *award* of all actions, *real*, when the ſubmiſſion is of actions *perſonal*, is not good. *Plowd.* 306 10 Rep. 132.

Yet if the ſubmiſſion be of things *perſonal*, and the *award* is, that one of the parties ſhall do an act *real*, in ſatisfaction of a perſonal injury, *&c.* or a ſubmiſſion be of one thing, and the *award* made of ſomething incident to, or neceſſarily depending upon it; or if the ſubmiſſion is of all actions real and perſonal, and the *award* only of matters perſonal, *&c.* it will be good in theſe caſes, if nothing elſe is notified to the arbitrators. *Dyer*, 216.

An *award* made only on one ſide, without any thing on the other, is void in law; as, that one ſhall pay or give bond for money to the other party, and he do nothing for it; but if it be to give bond to pay, or to pay a debt, and that the other ſhall be diſcharged of the debt, *&c.* this is good; ſo where it is that one party ſhall pay money to the other, and then the other ſhall releaſe all actions to him. 8 Rep. 72, 98.

If divers treſpaſſes be referred to arbitrament, and the award is, that one of the parties ſhall make the other parties amends, or give releaſe, and ſay not what amends, or what releaſe, *&c.* it is void for uncertainty. 5 Rep. *March* 18.

Award was, that each party ſhould give to the other a general releaſe of all demands, provided, that if either of them diſlike the *award*, within twenty days after made, and within that time pay 10*s.* the *arbitrament* to be void; it was held, that the firſt part of the *award* was good, and the *proviſo* repugnant and void. 1 *Cro.* 688.

Arbitrators are to make their *award ſecundum allegata & probata* (according to what is alledged and proved) but they may not enjoin any oath to the witneſſes; the *award*

ought to be publiſhed; and no one is bound to perform, till he can know what the *award* is. 4 Rep. 82. *Brownl.* 311.

A ſubmiſſion to *award* may be revoked and countermanded before the *award* made, where there is no ſpecialty to abide the *award* of J. S. &c. 8 Rep. 78. 81.

A ſubmiſſion was to an *award* by bond, and at the end of the condition of the bond was this clauſe, *and if the obligor ſhall conſent that this ſubmiſſion ſhall be made a rule of court, that then*, &c. Upon motion to make this ſubmiſſion a rule of court, it was oppoſed, becauſe theſe words do not imply his conſent; but if he would forfeit his bond, he need not let it be made a rule of court; yet becauſe this clauſe could be inſerted for no other purpoſe, the court took the conditional words to be a ſufficient indication of conſent and made the award a rule of court. *Salk.* 72. Pl. 8.

A matter was referred, by conſent of *Niſi Prius*, to the three foremen of the jury; and before the *award* was made, one of the parties ſerved the *arbitrators* with *ſubpœna* out of Chancery, which hindered their proceedings to make the *award*. And the court held this a breach of the rule, and granted an attachment *niſi cauſa* *Salk.* 73. Pl. 10. *Farreſley*, 8

Upon a ſubmiſſion to the *award* of the three foremen of the jury, who made their *award*, the *defendant* moved to ſet it aſide; becauſe they went on without giving him time to be heard, or to produce a witneſs; and *Holt*, chief juſtice, ſaid the *arbitrators* being judges of the party's own chooſing, the party ſhall not come and ſay, they have not done him juſtice; and put the court to examine it; *aliter*, where they exceed their authority; however the *award* was examined and confirmed, and the plaintiff moved for an attachment for not performing it; and the court held, that the non-performance, while the matter was *ſub judice*, was no contempt; then the plaintiff moved for his coſts, and that was denied; upon which *Fowel*, juſtice, ſaid, that ſeeing they could not give the party any coſts, he ſhould never be for examining into *awards* again. *Salk.* 73. Pl. 11.

H. bound himſelf in a bond, to ſtand to the *award* of *I. S.* which ſubmiſſion was made a rule of court. The party, for whoſe benefit the *award* was made, moved the court for an attachment for *non performance*, which was granted; pending that, he brought an action of debt upon the bond; upon this ſerjeant *Darnell* moved, that he might not proceed both ways, and likened it to the caſes, where the court ſtays actions on attornies bills, while the matter is under reference before the maſter: *Sed per curiam*, the motion was denied, and this difference taken; where the court relieves the party by way of amends in a ſummary way, as in the caſe cited, there it is reaſonable; otherwiſe here, where the plaintiff has no ſatisfaction upon the attachment; and the defendant was put to anſwer interrogatories. *Salk.* 73. Pl. 12.

Attachment lies not, for not performing an award made upon a rule of court without a perſonal demand. *Holt*, chief juſtice, remembered the firſt attachment of this kind was in Sir *John Humble*'s caſe in *Keyling*'s time, in which, and ever ſince, a perſonal demand has been thought neceſſary. In ſuch caſes of *award*, though they be not legally good, an attachment lies for *non-performance*; *aliter*, if impoſſible, but the party is excuſed as to that part which is impoſſible only. *Salk.* 87. Pl. 1.

Debt on obligation to perform an *award*, which was, that the defendant ſhould enjoy a houſe, of which the plaintiff was leſſee for years, during the term, paying to the plaintiff 20*s.* yearly; and for non payment of this, the action was brought; and it was held to lie. 1 *Cro.* 211.

The Form of an Award made by two Arbitrators on a Submiſſion.

TO ALL people to whom this preſent writing indented of *award* ſhall come. We *E. F.* of, &c. and *G. H.* of, &c. ſend greeting. *Whereas* there are ſeveral accounts depending, and divers controverſies and diſputes, have lately ariſen between *A. B.* of, &c. of the one part, and *C. D.* of, &c. of the other part, touching and concerning, &c. And whereas for putting an end to the ſaid differences and diſputes, they the ſaid *A. B.* and *C. D.* by their ſeveral bonds or obligations, bearing date, &c. are reciprocally bound each to the other, in the penal ſum of, &c. to ſtand to, abide by, perform, and keep the *award*, order, and final determination of us, the ſaid *E. F.* and *G. H.* arbitrators, indifferently choſen, between the ſaid parties, to arbitrate, &c. [*as in the bond*] ſo as

as the ſaid *award* be made in writing, under our hands and ſeals, and ready to be delivered to the parties in difference, on or before, &c. next, as by the ſaid in part recited bonds, or obligations, with the conditions thereunder written, may appear. *Now, know ye*, that we the ſaid arbitrators, whoſe names are hereunto ſubſcribed, and ſeals affixed, taking upon us the burden of the ſaid *award*, and having fully examined, and duly conſidered the proofs and allegations of both the ſaid parties, *do*, for the ſettling amity and friendſhip between them, make and publiſh this our *award*, by and between the ſaid parties, in manner following; that is to ſay, *firſt*, We do award and order, that all actions, ſuits, quarrels, and controverſies whatſoever had, moved, ariſen, or depending between the ſaid parties, in law or equity, for any manner or cauſe whatſoever, touching the ſaid premiſſes, to the day of the date hereof, ſhall ceaſe and be no farther proſecuted; and that each of the ſaid parties ſhall bear and pay his own coſts and charges, in any wiſe relating to, or concerning the ſaid premiſes; and we do alſo *award* and order, that the ſaid *A. B.* ſhall pay, or cauſe to be paid to the ſaid *C. D.* the ſum of, &c. within the ſpace of, &c. And further, we do hereby award and order, that the ſaid *C. D.* ſhall, on before, &c. pay or cauſe to be paid to the ſaid *A. B.* the ſum of, &c. or give ſufficient ſecurity for the ſame to the ſaid *A. B.* *And laſtly*, we do *award* and order, that the ſaid *A. B.* and *C. D.* on the receipt of the ſeveral ſums of, &c. ſhall in due form of law, execute each to the other of them, or to the others uſe, general releaſes, ſufficient in law, for the releaſing, by each to the other of them, his heirs, executors, and adminiſtrators, of all actions, ſuits, arreſts, quarrels, controverſies, and demands whatſoever, touching or concerning the premiſes aforeſaid, or any matter or thing thereunto relating, from the beginning of the world to the day of the date, &c. [*here mention the date of the arbitration bonds*] laſt paſt. *In witneſs whereof we have hereunto ſet our hands and ſeals, the*, &c. *in the year*, &c.

An Umpirage, for Want of a Determination by Arbitrators choſen.

TO ALL, &c. I, *I. K.* of, &c. ſend greeting. *Whereas* there are ſeveral accounts depending, &c. [*here go on as in the former award, until you come to*] to ſtand to, &c. the award, order, and final determination of *E. F.* of, &c. and *G. H.* of, &c. arbitrators indifferently choſen between the ſaid parties, to arbitrate, &c. [*as in condition of the bonds*] ſo as the ſaid award was made in writing under the hands and ſeals of the ſaid arbitrators, and ready to be delivered to the parties in difference, on or before, &c. laſt paſt; and if the ſaid arbitrators did not draw up the ſaid award in writing, and deliver the ſame as aforeſaid, on or before the ſaid, &c. then the ſaid parties were to ſtand to, abide, obſerve, perform, and keep the award, umpirage, final end and judgment of me, the ſaid *I K.* umpire indifferently choſen, between the ſaid parties, for the compoſing and ending of differences aforeſaid; ſo as my ſaid award, umpirage, and determination be made in writing, under my hand and ſeal, and ready to be delivered to the ſaid parties, on or before, &c. as by the ſaid in part recited bonds or obligations, with the conditions thereunder written may appear. *And whereas* the ſaid *E. F.* and *G. H.* did not make up their ſaid award between the ſaid parties, within the time limited by the ſaid in part recited bonds or obligations, as aforeſaid; whereby, and on which account, the compaſſing, ending, and determining of the ſaid differences and matters in diſpute now depends wholly upon me: NOW, KNOW YE, that I, the ſaid *I. K.* having taken upon me the buſineſs and charge of the ſaid award and umpirage, and being willing to ſet the ſaid parties at peace and concord, by making a final end of the controverſies between them; and having deliberately, and at large, heard, examined, and duly conſidered the grievances, allegations, titles, vouchers, and evidences of both the ſaid parties, in relation to the ſaid premiſes in diſpute, *do* make, publiſh, and declare, and deliver this my award or umpirage, in the manner following, that is to ſay, *Firſt*, I arbitrate, award, judge, order, and determine, that, &c, [*here inſert the ſeveral particulars of the award*] in witneſs, &c.

An

An Award or Umpirage by a ſingle Perſon, elected to arbitrate.

TO ALL, &c. I, *E. F.* of, &c. ſend greeting. *Whereas*, &c. [*Here go on as in the award made by two arbitrators, until you come to*, ſtand to, &c.] the award, order, and final determination of me the ſaid *E. F.* indifferently elected and choſen between the ſaid parties, to arbitrate, &c. [*as in the conditions of the bond*] ſo as my ſaid award or umpirage be made in writing under my hand and ſeal, and ready to be delivered to the ſaid parties on or before, &c. as in and by the ſaid in part recited bonds, or obligations, and the conditions thereof, may appear. *Now know ye*, that I, the ſaid *E. F.* [*here go on as in the laſt precedent*]. In witneſs, &c.

The Form of a Submiſſion to an Arbitration, in Order to make it a Rule of Court.

BE *it remembered*, that *A. B.* of, &c. and *C. D.* of, &c. being deſirous finally to end and determine divers controverſies, ſuits, and quarrels that have lately ariſen between them, did on, &c. agree to ſubmit and refer all the ſaid controverſies, ſuits, and quarrels, to the award and determination of *E. F.* of, &c. and *G. H.* of, &c. arbitrators, for that end indifferently choſen, by the ſaid parties; which ſaid award is to be made in writing, under the hands and ſeals of the ſaid arbitrators, and ready to be delivered to the ſaid parties, on or before, &c. And the ſaid parties did mutually promiſe and oblige themſelves, that they would obey, perform, and execute ſuch award, as the ſaid arbitrators ſhould make in the premiſes. Now the ſaid parties do further agree, that the ſaid ſubmiſſion ſhall be made a rule in his majeſty's court of, &c. at *Weſtminſter*, and that they will be finally concluded by the arbitration that ſhall be made in the premiſes by the ſaid arbitrators, purſuant to ſuch ſubmiſſion. *Witneſs*, &c.

I ſhall add to the preceding ſpecimens, the form of a general releaſe as part of an award; and with it cloſe this chapter.

KNOW all men by theſe preſents, that I *A. B.* have remiſed, releaſed, and for ever quit-claimed, and by theſe preſents, do, for me, my heirs, executors, and adminiſtrators, remiſe, releaſe, and for ever quit-claim, unto *C. D.* his heirs, executors, and adminiſtrators, all, and all manner of actions, cauſe and cauſes of actions, bills, bonds, writings, obligations, debts, dues, duties, accounts, ſum and ſums of money, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages and demands whatſoever, both in law or equity, or otherwiſe howſoever, which againſt the ſaid *C. D.* I ever had, now have, and which I, my heirs, executors, and adminiſtrators, ſhall or may have, claim, challenge, or demand, for or by reaſon, or means of any matter, cauſe, or thing, from the beginning of the world to the day of the date of theſe preſents. *In witneſs whereof*, I have hereunto put my hand and ſeal, the

Day of, &c.

A. B.

Sealed and delivered in the
Preſence of
R. M.
S. E.

Of

Of Aliens, Naturalization, and Denization.

AN ALIEN is one born in a ſtrange country, out of the allegiance of the king, being quite contrary to a denizen or natural ſubject; though a man born out of the land, provided the place of his nativity be in any of his majeſty's dominions beyond ſea, or born of *Engliſh* parents, out of the obedience of the king, if the parents at the time of his birth were of ſuch obedience, is no *alien*. 25 *Edw.* III. c. 2.

And if one born out of the king's obedience, come and reſide in *England*, his children, begotten and born here, are not *aliens*, but *denizens*. 7 Rep.

All perſons, being the king's natural-born ſubjects, may inherit, as heirs, though their anceſtors were *aliens*. 11 and 12 *Will.* III. C. 6.

If an ambaſſador, or any other *Britiſh* miniſter, or perſon inveſted with any publick character, under a commiſſion from the king of *Great Britain*, or of a commercial company, enjoying rights and privileges under an act of parliament, or by letters patent from the crown, have any children in a foreign country, by a wife, who is an *Engliſh* woman, they are by the common law natural-born ſubjects, and not *aliens*.

And if an *Engliſh* merchant, reſiding beyond ſea, marries a woman of the country, by whom he has a child, and then dies, this child is born a *denizen*, and ſhall be heir to him, notwithſtanding the wife be an *alien*. *Cro. Car.* 605. *March* 91.

Thoſe which are born in the *Engliſh* plantations, are ſubjects born, as are thoſe likewiſe born on the king of *England*'s ſeas. *Danv.* Abr. 324.

There are two incidents that are regularly neceſſary to make one a ſubject born; *Firſt*, that his parents, at the time of his birth, be under the actual obedience of the king; or, *ſecondly*, that the place of his birth be within the king's dominions. 7 Rep. 18.

It is the place of birth that makes the diſability of an *alien* to have lands, &c. The blood is not the diſability, but the place where born. *Cro. Jac.* 539.

An *alien* can hold no land by deſcent or purchaſe, or be tenant by the courteſy, or in dower. 5. Rep. 502.

An *alien* can have no real or perſonal action for or concerning lands, tenements, or hereditaments, to him and his heirs; albeit he can have no heir, yet he is of capacity to take a fee-ſimple, but not to *hold*; for the king, upon *office* found, ſhall have it by his prerogative. 1 Inſt. 2.

A deviſe of lands to an *alien* is void. 4 *Leon.* 82.

And if a man be bound to an *alien* enemy in an obligation, the bond is void to him, but the king will have it. 1 *Lev.* 59. *Danv.* Abr. 322.

Aliens may obtain goods, and perſonal eſtate, by trade, &c. and may maintain actions for the ſame; they may alſo have action of aſſault and battery, and for ſupport of their credit. 1 *Bulſt.* 134.

But they cannot bring any real action, though he may a perſonal, unleſs it be for a houſe, for a neceſſary habitation, being for the benefit of trade. 7 Rep.

And an *alien* enemy cannot maintain any action whatſoever, nor get any thing lawfully within this realm. Terms *de Ley*, 36.

Aliens, living under the protection of the king, may have the benefit of a general pardon. *Hob.* 371.

No *alien* ſhall be returned on any jury, nor be ſworn for trial of iſſues between ſubject and ſubject, &c. but where an *alien* is party in a cauſe depending, the inqueſt of jurors are to be half *denizens*, and half *aliens*; but in caſes of high treaſon this is not allowed. 2 Inſtit. 17.

An *alien* ſhall not have any vote in the choice of knights of the ſhire, or burgeſſes to parliament. *Hob.* 270.

An all *aliens* are incapable of being members of parliament, enjoying public offices, &c. 12 *Will.* III. C. 2.

If

If an action is brought againſt an *alien*, and there is a verdict and judgment againſt him, yet he may bring a writ of error, and be plaintiff there, and that ſuch plea is not good in that caſe. 1 *Brownl.* 42.

Though an *alien* may purchaſe and take that which he cannot keep or retain, yet the law hath provided a mean of enquiry before he can be diveſted of the ſame; for until ſome *office* be found, the freehold is in him. *Goldſbor.* fol. 29. *Mich.* 30 *Eliz. Coke* 5 Part. *Page*'s Caſe, fol. 52.

And this office, which is to gain the king a fee, or freehold, muſt be under the *Great Seal* of *England*; for a commiſſion under the *Exchequer Seal* is not ſufficient to entitle the king to the lands of an *alien* born, for the commiſſion is what gives the king a title, for before that he hath none. *Moore* 4. *Walton* v. *Maſhum. Dyer*, 282.

An *alien* cannot purchaſe lands for his own benefit, but he may for that of the crown; therefore if land be deviſed to an *alien*, the crown ſhall have it; yet if an alien tenant in tail, ſuffers a common recovery before office found, the recovery is good. *Lucas*'s Rep. 92, 94, 120, 122, 124, 136.

If an *alien* and a ſubject born, purchaſe lands to them and their heirs, they are *joint tenants*, and ſhall join in aſſize, and the ſurvivor ſhall hold place till *office found*. 3 *Cro.* 123. *Plowd.* Com. 477.

By the finding of this *office*, the party is out of poſſeſſion, if the ſame be of houſe or lands, or ſuch things as do lie in livery; but of rents, common, advowſons, and other inheritances incorporeal, which lie in grant, the *alien* is not out of poſſeſſion, be they appendant or in groſs; therefore if an information or an action be brought for the ſame, the party may reverſe the *office* in that court where the action or information is brought for the king.

And if the king obtains not the poſſeſſion within the year after the *office* found, he cannot ſeize without a *ſcire facias*. 29 Aſſize, 30, 31, 32. Aſſize Traverſe, 32.

An *alien* infant, under the age of twenty-one years, cannot be a merchant trader within this realm, nor can he enter any goods in his own name at the cuſtom-houſe. 13 and 14 *Car.* II. C. 11. S. 10.

If an *Engliſhman* ſhall go beyond ſea, and ſhall there ſwear allegiance to any *foreign prince* or *ſtate*, he ſhall be eſteemed an *alien*, and ſhall pay the ſame duties as they; but, if he returns and lives in *England*, he ſhall be reſtored to his liberties. 14 and 15 H. VIII. C. 4.

An alien enemy commorant here by the king's licence, and under his protection, may maintain debt upon bond, although he came not with ſafe-conduct. Lord *Raym.* 282.

The eldeſt ſon of an *alien*, being alſo an *alien*, cannot inherit; but the land ſhall deſcend to the younger brother, if a *denizon*: As, for inſtance, if there be three brothers, of which the eldeſt is an *alien*, the other two naturalized, and the middle brother purchaſes, and dies without iſſue, the younger brother ſhall have the land. *Ca. Jac.* 532. *Dr.* and *St. Di.* 1. C. 7.

Concerning the rule of deſcent, a proximity of blood is not ſo much to be regarded as the municipal laws of the country in which the queſtion ariſeth; for the ſeveral laws of divers kingdoms have variouſly diſpoſed the manner of deſcents, even in the ſame line and degree of nearneſs: For inſtance, the father certainly is as near of kin to the ſon, as the ſon is to the father, and is nearer in proximity than a brother, and therefore ſhall be preferred as next of kin in adminiſtration of the ſon's eſtate.

According to the laws of *England*, the ſon's dying without iſſue, or brothers or ſiſters, the father cannot ſucceed, but it deſcends to the uncle. *Lit. S.* 3.

There are two kinds of deſcent, according to the common law of this realm, viz. 1 Inſt. 10.

1ſt, *Lineal*, from the father, or grandfather to the ſon, or grandſon; and

2dly, *Collateral* or *tranſverſed*; as from brother to ſiſter, uncle to nephew, and *è converſo*: And both theſe again are of two ſorts. *Hale*'s Hiſtory of the Law, C. 1.

1ſt, *Immediate*, as in lineals, from father to ſon.

2dly, *Mediate*, as in lineals, from grandfather to grandchild; where the father dying in the life-time of the grandfather, is the *medium differens* of the deſcent; collateral as in the lineal, from uncle to nephew, or *è converſo*. *Grot.* de Jure Belli ac Pac. Lib. 2. C. 7.

And

And this is mediate deſcent, or mediate anceſtor, though to many purpoſes it may be immediate; for the father dying in the life-time of the grandfather, the ſon ſucceeds in point of deſcent in the lands immediately to the grandfather; and in writ of entry ſhall be ſuppoſed to be in the grandfather, and not in the *poſt & cui*.

This is called a mediate deſcent, becauſe the father is the *medium* through whom the ſon derives his title to the grandfather.

In *immediate* deſcents there can be no impediment, but what ariſes in the parties themſelves; for inſtance, the father ſeized of lands, the impediment that hinders the deſcent muſt be in the father or ſon, as if either of them be an *alien*.

In *mediate* deſcents, the diſability of being an *alien*, in him that is called the *medius anteceſſor*, will diſable a perſon to take by deſcent, though he himſelf have no ſuch diſability.

In *lineal* deſcents if the father be an *alien*, and hath iſſue a *denizen* born, and die in the life-time of the grandfather; the grandfather dies ſeized, the ſon ſhall not take, but the land ſhall *eſcheat*.

In *collateral* deſcents, *A.* and *B.* brothers: *A.* is an *alien*, and has iſſue *C.* a *denizen* born; *B.* purchaſes lands, and dies without iſſue; *C.* ſhall not inherit, becauſe *A.* was the *medius anteceſſor*, or *medium differens*, is incapable. *Dyer*, 274, *Gray's Caſe*.

But in any deſcents, the impediment in an anceſtor, who is not *medius anteceſſor*, from whom, and to whom, will not impede the deſcent.

As for inſtance; the grandfather and grandmother, being both *aliens*, have iſſue, the father, a *denizen*, who hath iſſue the ſon, a *natural-born ſubject*; the father purchaſes lands, and dies, the ſon ſhall be heir to the father, notwithſtanding the diſability of the grandfather, and yet all the blood that the father hath is derived from the diſabled parents; for they are not *medii anteceſſores*, between the father and the ſon, but *paracount*. *Courtney's* Caſe. Com. Pleas, Coron. Fol. 141.

The law does not hinder, *but that an alien is of the ſame degree and relation of conſanguinity as natural-born ſubjects, or denizens born*, the ſon, the father, and brother, though *aliens*; the ſon, father, and brother, our law takes notice of as well as natural-born ſubjects; and ſo it was adjudged; for he ſhall be preferred in *adminiſtration*, though an *alien, as next of kin*. *Cro. Car.* 8, 9. *Caroons'* Caſe.

But in caſes of *inheritance*, the law takes *no notice of him*, and therefore, as he ſhall not take by deſcent, ſo he ſhall not *impede* the deſcent to the younger brother; as, for inſtance, *A. an alien*, *B.* and *C.* naturalized by act of parliament, all brothers; *B* purchaſes lands, and dies, *ſine prole*, without iſſue, *C.* ſhall inherit, and not *A.* 29 *Ed.* II. Tit. Cozenage, 5.

A. an *Alien*, *B.* and *C.* his brothers, both naturalized by act of parliment; *B.* purchaſes lands, and dies without iſſue, the ſame ſhall not come to *A.* nor to his iſſue, though a *denizen*, but ſhall come to *C.* and his iſſue; the law taking no notice of *A.* as to *impede* the ſucceſſion of *C.* or his iſſue, though it work a *conſequential diſability*, to bar the iſſue of *A.* parallel to what the law calls corruption of blood, which is a conſequent of attainder. *Ramſay's* Caſe, 15 *Car.* II. in Com. Ban.

Again, in a lineal deſcent, if there be a grandfather, a natural-born ſubject, the father of an *alien*, and the ſon a natural-born ſubject; the father is made a *denizen*, yet he ſhall not inherit the grandfather; and if the father dies in the life of the grandfather, the grandchild, *though born after the denization*, doth not remove either the perſonal, or the conſequential impediments, or incapacity of the father.

In *collateral* deſcents, the father, a natural-born ſubject, has iſſue two ſons *aliens*, who are both made *denizens*; one dies without iſſue, the other ſhall not inherit him. *Godfrey* and *Dixon's* Caſe. *Godb.* 275.

A. an *alien*, marries an *Engliſh* woman, who is ſeized of lands, and has iſſue; the father and mother die, yet the iſſue may inherit the mother, *non obſtante* the incapacity of the father being an *alien*. *Cro. Jac.* 539. 2 *Roll's* Rep. 92. *Vaughan* 285.

The ſtatute *de natis ultra mare*, declares the iſſue, born of an *Engliſh* man upon an *Engliſh* woman, ſhall be a *denizen*; and the conſtruction has been, though an *Engliſh* merchant marries a foreigner, and has iſſue by her born beyond the ſeas, that iſſue is a natural-born ſubject. *Levinz.* 59. 25 *Edw.* III. *Cro. Car.* 601.

But if an *Engliſh* woman goes beyond the ſea, and there marries an *alien*, and has iſſue beyond the ſea, that iſſue are aliens. *Cro. Car.* 601. *Bacon's* Caſe.

Yet

Yet if an *Engliſh* woman marries an *alien* beyond the ſeas, and then comes into *England*, and has iſſue, they are not *aliens*, but may inherit. *Prowd*'s Caſe of *Kent*.

No *alien*, or perſons not born within the allegiance of the king, or naturalized, or made a free *denizen*, ſhall exerciſe the occupation of a merchant, or factor, in any of his majeſty's plantations or territories in *Aſia*, *Africa*, or *America*, upon pain of forfeiture of all his goods, which are in his poſſeſſion, &c. 12 *Car.* II. C. 18. S. 2.

All ſuch perſons as ſhall be born on board any of the ſhips employed about the trade of the *South-Sea* company, or in any of the places which ſhall be diſcovered or poſſeſſed by the company, ſhall be deemed natural-born ſubjects. 9 *Ann.* C. 21. S. 53.

NATURALIZATION is the making an *alien* the king's *natural* ſubject by act of parliament, whereby he becomes as much a ſubject, to all intents and purpoſes, as if he was born ſo; for by *naturalization*, a perſon's iſſue, before the *naturalization*, ſhall inherit. 1 Inſt. S. 129.

A ſtranger, *naturalized* by act of parliament, may have lands by deſcent, as heir at law, as well as have them by purchaſe; but until he is *naturalized*, or made *denizen*, a ſtranger is not generally under the king's protection, to have the benefit of the laws.

No perſon of the age of eighteen years, or above, ſhall be *naturalized*, unleſs he have received the Lord's Supper within one month before any bill exhibited for that purpoſe, and alſo ſhall take the oath of ſupremacy and allegiance in the parliament-houſe, before his bill be twice read; and the lord chancellor, if the bill begin in the upper houſe, and the ſpeaker of the commons houſe, if the bill begin there, ſhall have authority during the ſeſſion to adminiſter ſuch oaths. 7 *Jac.* I. C. 2.

The clauſe in the act 12 *Will.* III. cap. 2. whereby it is enacted, that no perſon born out of theſe kingdoms, though he be naturalized, except ſuch as are born of *Engliſh* parents, ſhould be incapable to be of the privy council, &c. ſhall not extend to diſable any perſon, who, before his majeſty's acceſſion to the crown, was naturalized. 1 *Geo.* I. C 4. S. 1.

No perſon ſhall be naturalized, unleſs in the bill exhibited for that purpoſe there be a clauſe to declare, that ſuch perſon ſhall not be enabled to be of the privy council, or a member of either houſe of parliament, or enjoy any office of truſt, or have any grant from the crown; and no bill of *naturalization* ſhall be received without ſuch clauſe. S. 2.

Children born out of the allegiance of the crown of *Great Britain*, whoſe fathers ſhall be natural-born ſubjects, ſhall, by virtue of the act 7 *Ann.* cap. 5. and of this act, be natural-born ſubjects. 4 *Geo.* I. C. 21. S. 1.

Provided that nothing in 7 *Ann.* cap. 5. or this act, ſhall make any children, born out of the liegeance of the crown, to be natural-born ſubjects, whoſe fathers, at the time of the birth of ſuch children, were, or ſhall be attainted of high treaſon, either in this kingdom, or in *Ireland*, or were liable to the penalties of high treaſon or felony in caſe of their returning into this kingdom or *Ireland*, without licence of his majeſty; or were, or ſhall be in the ſervice of any foreign ſtate, then in enmity with the crown of *Great Britain*. S. 2.

If any child, whoſe father, at the time of the birth of ſuch child, was attainted of high treaſon, or liable to the penalties of high treaſon or felony in caſe of returning without licence, or was in the ſervice of any foreign ſtate in enmity with the crown, excepting all children of ſuch perſons who went out of *Ireland* in purſuance of the articles of *Limerick*, hath come into *Great Britain* or *Ireland*, or any other of the dominions of *Great Britain*, and hath continued to reſide within the dominions aforeſaid for two years, at any time between the 16th of *November*, 1708, and the 25th of *March*, 1731, and during ſuch reſidence hath profeſſed the proteſtant religion, or hath come into *Great Britain*, &c. and profeſſed the proteſtant religion, and died within *Great Britain*, &c. at any time between the 16th of *November*, 1708, and the 15th of *March*, 1731, or hath continued in the actual poſſeſſion or receipt of the rents of any lands in *Great Britain*, &c. for one year, at any time between the ſaid 16th of *November*, 1708, and the 25th of *March*, 1731; or hath, *bona fide*, ſold or ſettled any lands in *Great Britain* or *Ireland*, and any perſon claiming title thereto, under ſuch ſale or ſettlement, hath been in actual poſſeſſion or receipt of the rents thereof for ſix months, between the ſaid 16th of *November*, 1708, and the 25th of *March*, 1731, every ſuch child ſhall be deemed a natural-born ſubject of the crown of *Great Britain*. S. 3.

And

And for the better encouraging foreign ſeamen to ſerve on board *Britiſh* ſhips, it is further enacted, that every ſuch foreign ſeaman who ſhall, after the firſt day of *January*, 1739, have ſerved during the war, on board any *Britiſh* man of war, merchant-ſhip, or privateer for two years, ſhall be deemed a natural-born ſubject of *Great-Britain*, and ſhall enjoy all the privileges, &c. as an actual native of *Great-Britain*. 13 *Geo.* II. P. 125.

Provided that no perſon, thus naturalized, ſhall be of the privy-council, a member of either houſe of parliament, or have any place of truſt, civil or military, or have any grant of lands, &c. from the crown.

Enacted, that after the 1ſt day of *June*, 1740, all foreigners, who have inhabited or ſhall inhabit for ſeven years, or more, in any of our *American* colonies, and ſhall not be abſent from ſome of the ſaid colonies more than two months, at any one time, during the ſaid ſeven years; and ſhall take and ſubſcribe the oaths, and make, repeat, and ſubſcribe the declaration appointed by the act of 1 *Geo.* I. or, being a *Quaker*, ſhall make and ſubſcribe the declaration of fidelity, and take and affirm the effect of the abjuration oath, appointed by the act 8 *Geo.* I. and alſo make and ſubſcribe the profeſſion of his chriſtian belief, appointed by the act 1 *W.* and *M.* before one of the judges of the colony, wherein ſuch perſons have inhabited, or ſhall inhabit, ſhall be adjudged to be his majeſty's natural born ſubjects of this kingdom, to all intents and purpoſes, as if they had been really born in the ſame; that the ſaid judges ſhall give the ſaid oaths, &c. in open court, between the hours of nine and twelve in the forenoon, which ſhall be entered in the ſame court, and alſo in the ſecretary's office of the colony wherein ſuch perſon ſhall ſo inhabit; for doing whereof two ſhillings ſhall be paid at ſuch reſpective place, under the penalty of 10*l.* for every neglect: Every ſecretary is alſo required to make ſuch entry, in a book to be kept for that purpoſe in his office, on notification by a judge of the ſame colony, under the like penalty. P. 167, 168, 169.

All perſons duly qualifying themſelves to be naturalized, except *Quakers* or *Jews*, ſhall receive the ſacrament of the Lord's Supper in ſome Proteſtant congregation in *Great Britain*, or in ſome of the *American* colonies, within three months next before their taking and ſubſcribing the ſaid oaths and declaration; and ſhall at the time of taking and ſubſcribing the ſaid oaths, &c. produce a certificate, ſigned by the perſon adminiſtering the ſaid ſacrament, and atteſted by two credible witneſſes, whereof an entry ſhall be made in the ſecretary's office of the colony wherein they ſhall inhabit, as alſo in the court where the ſaid oaths ſhall be taken, without fee or reward.

Whenever a *Jew* preſents himſelf to take the oaths purſuant to this act, the words *upon the true Faith of a Chriſtian*, ſhall be omitted in adminiſtering the ſame; and the taking the ſaid oaths, without thoſe words, as the *Jews* were permitted to take the oath of abjuration by the act of 10 *Geo.* I. ſhall be deemed a ſufficient taking according to this act. P. 170.

A certificate, under the ſeal of any of the ſaid colonies, of any perſon's having conformed in the ſeveral particulars required by this act, ſhall be deemed a ſufficient teſtimony thereof, and of his being a natural-born ſubject of *Great Britain*, to all intents and purpoſes, in every court within the king's dominions.

The ſecretary of every reſpective colony ſhall ſend over to the commiſſioners of trade at *London*, at the end of every year, to be computed from the 1ſt of *June*, 1740, exact liſts of the names of all perſons who have that year entitled themſelves to the benefit of this act, under penalty of 50*l.* for every neglect; all which liſts ſhall be entered in a book, by the ſaid commiſſioners, to be kept at the office for publick view. P. 171.

Foreign Proteſtants who have ſerved in the royal *American* regiment, or as engineers in *America* for two years, and ſhall take the oaths, &c. appointed by 1 *Geo.* I. C. 13. and ſhall produce certificates of their having received the ſacrament in ſome Proteſtant church, within ſix months of the time of their taking the oaths, &c. ſhall be deemed natural-born ſubjects. 2 *Geo.* III. C. 25. S. I.

Provided that no ſuch naturalized perſon ſhall be of the privy council, or a member of either houſe of parliament, or capable of enjoying any place of truſt in *Great Britain* or *Ireland*, civil or military, or of taking any grant from the crown to himſelf, or any in truſt for him, of any lands, &c. in *Great Britain* or *Ireland*.

After reciting the before-mentioned act, it adds, and as many of the people of the congregation called the *Moravian* brethren, and other foreign Proteſtants, not *Quakers*, who ſcruple the taking of an oath, are ſettled in his majeſty's colonies in *America*, and demean themſelves there as a ſober, quiet, and induſtrious people, and many others of the like perſuaſion, are deſirous to tranſport themſelves thither; and if the benefit of the ſaid act of 13 *Geo.* II. were extended to them, they who are now there, would thereby be encouraged to continue their reſidence, and others would reſort thither in greater numbers; whereby the ſaid colonies would be improved, their ſtrength increaſed, and their trade extended; *It is therefore enacted*, that from and after the 25th of *December*, 1747, all foreign Proteſtants, who conſcientiouſly ſcruple the taking of an oath, and who are born of the liegeance of his majeſty, who have or ſhall reſide for ſeven years in any of his majeſty's colonies in *America*, and ſhall not have been abſent out of ſome of them longer than two months at any one time during the ſaid term, and ſhall qualify themſelves, as by the recited act of 1 *W.* and *M.* and 8 *Geo.* I. is directed, before the chief or other judge of the colony, wherein they reſpectively have or ſhall ſo reſide, ſhall be deemed to be his majeſty's natural-born ſubjects, to all intents and purpoſes, as if they had been born within this kingdom; which ſaid affirmation and ſubſcription of the ſaid declarations, the ſaid chief, or other judge, is to adminiſter and take, and the ſame ſhall be done in every reſpect, as in the ſaid recited act of 13 *Geo.* II. is ſet forth and directed, and liſts ſhall be tranſmitted, &c. 20 *Geo.* II. P. 935, 936, 937.

No perſon ſhall be naturalized by virtue of this act, unleſs he ſhall have received the ſacrament, &c. P. 938.

The proviſions contained in the act of 13 *Geo.* II. &c. ſhall extend to foreign Proteſtants, who conſcientiouſly ſcruple the taking of an oath, and who ſhall be qualified as aforeſaid

The ſaid foreign Proteſtants ſhall enjoy the privileges of natural-born ſubjects, and all the benefits of this act, and the ſaid act of 13 *Geo.* II.

No perſon who ſhall become a natural-born ſubject of this kingdom by virtue of this act, ſhall be of the privy council, &c.

Nothing in this act, or in the recited act of 13 *Geo.* II. ſhall extend to naturalize any perſon who by virtue of an act of 4 *Geo.* II. intitled *an act to explain a clauſe in 7 Anne*, &c. is declared not to be intitled to the benefit of the ſaid act of 7 *Annæ*, but all ſuch perſons ſhall remain in the ſame ſtate and condition to all intents and purpoſes, as they would have been in, if the ſaid recited act of 13 *Geo.* II. or this act had never been made.

According to law, no one can be naturalized but by act of parliament, and that cures the defect as if they had been born in *England*; and acts of this nature may be ſo penned, as to cure defects in the father or anceſtor, as well as in the parties themſelves, which it will not do except expreſs words to that purpoſe are inſerted. 1 Inſt. 129.

Children born of parents, ſubjects within any of the places or guards poſſeſſed by the king's army when in an hoſtile manner he forcibly enters the territories of another prince or ſtate, ſhall be deemed natural-born ſubjects, and ſtand in no need of naturalization. *Dyer*, Fol. 224. Placit. 20. *Crow.* ver. *Ramſey.*

It has been conceived, that a foreigner, being naturalized in *Ireland*, may clothe him with the title of a natural-born ſubject of that country, but not qualify him as one of this. Lord *Vaughan*, Fol. 301.

DENIZATION is the enfranchiſing an *alien*: making him a ſubject by the king's letters patent, and he is called *donaiſon*, becauſe his legitimation proceeds *ex donatione regis*, from the king's gift. Such a one is enabled in many reſpects to do as the king's native ſubjects do, to purchaſe and poſſeſs lands, enjoy any office or dignity; and when he is thus enfranchiſed, he is ſaid to be under the king's protection, or *eſſe ad fidem regis Angliæ*, before which time he can poſſeſs nothing legally, in *England*. But notwithſtanding this, it is of *naturalization*; for a ſtranger naturalized may inherit land by deſcent, which a *denizen* cannot; and in the charter, whereby a perſon is made a *denizen*, there is commonly contained ſome clauſe that expreſsly abridges him of that full benefit which natural ſubjects enjoy. *Bract.* lib. 6. Tract. 5. C. 25. 2 Inſt. 741.

When the king makes a *denizen* by letters patent, he may purchaſe lands, and his iſſue, *born afterwards*, may inherit them; but thoſe he had before ſhall not: And though

though a *denizen* is enabled to purchaſe, he cannot inherit the lands of his anceſtors, but as a purchaſer he may enjoy them; and he may take lands by deviſe. 1 Inſt. 8. 11 Rep. 67. 5 Rep. 52.

Aliens made *denizens* are incapable of offices in the government, to be members of parliament, &c. 12 *W.* III. C. 2. 1 *Geo.* II. C. 4

It is ſo high a prerogative to make *aliens denizens*, that the king cannot grant his power over to any other. 7 Rep. *Wood*'s Inſt. 22.

Of Banks and Bankers.

A *BANK* is a public office for keeping and circulating money, to be employed in exchanges, diſcounts, government-loans, &c. or to be otherwiſe diſpoſed of for the profit of the proprietors.

In other words, a bank may be denominated a common repoſitory, where many perſons agree to keep their caſh, to be always ready at their call, or ſubject to their directions.

The word *bank* is derived from the *Italian*, *banca* or *banco*, as thoſe of that nation uſed formerly to exerciſe the function of exchangers, or bankers, in all the publick places, or *bourſes* of their trading cities, ſeated on forms with benches to count their caſh, write their letters and draw their bills of exchange on; and ſome authors add, that when any of them had the misfortune to fail, his bench was broke, either as a mark of infamy, or to put another in his place, and from this occurrence they pretend the word bankrupt, in *French banqueroute*, is derived.

And from which circumſtance, we may ſee that this buſineſs was originally confined to private perſons; but the advantages ariſing from it to commerce being very diffuſive and general, ſeveral ſtates thought proper to incorporate ſome of the moſt conſiderable of their ſubjects for the purpoſes of carrying it on with a greater ſecurity to the concerned; whilſt other potentates retain the protection and management in their own hands.

Before we proceed to an illuſtration of the conſtitutions of the moſt reputable banks now exiſting, in moſt of the capital cities of *Europe*, which will be done according to the order of time in which they were inſtituted; it will be neceſſary juſt to mention the different kinds of banks, as they differ widely from each other in their principles and practice.

Some are inſtituted wholly on the publick account, and put under the direction of the magiſtrates, who are obliged to take ſuch care of the management, that the money or bullion depoſited therein, ſhall always be kept for the uſe of the proprietors, and ſhall never be let out for profit or advantage; of this kind is the famous bank of *Amſterdam*, which is adminiſtered with ſo great a ſtrictneſs and fidelity, that it is ſaid a magiſtrate, who was one of the directors of it, was ſentenced to death, for making uſe of a ſum of money but for one day, though he paid it in the next. Wherefore, from an opinion the proprietors entertain of the equity of its adminiſtration, they judge themſelves ſo ſecure that their money lies always ready to anſwer their demands, that they ſeldom draw out large ſums, but make their mutual payments by transferring the ſums from one man's account to another's; and from this great eaſe and convenience it is come to paſs, that payments made by aſſignments on this bank are valued at from 3 to 5 and 6 *per cent.* above the payment of money, which difference between the bank and current money is called *agio*.

A ſecond

A ſecond ſort of banks is ſuch as conſiſt of a company of monied men, who being duly eſtabliſhed and incorporated by the laws of their country, agree to depoſit a conſiderable fund or joint ſtock, to be employed for the profit and advantage of the whole ſociety, in all thoſe ways which are compatible with the nature of ſuch an undertaking; as borrowing upon their own credit; and lending money upon good ſecurities; buying and ſelling bullion, gold and ſilver, and foreign ſpecie; diſcounting of bills of exchange, or other ſecure debts; receiving and paying the caſh of other perſons; and of this kind is the bank of *England*.

A third ſort is the banks of pivate men, of which we ſhall treat diſtinctly in a ſeparate chapter.

As to the firſt kind, it is certain, that nothing can be ſo infallibly ſafe, as where the value is kept always ready in ſpecie; and here alſo the eaſe and ſecurity of traders are effectually provided for, in the receipts and payments of their money; but yet this kind of bank is ſo much the leſs uſeful to the publick, as it can neither be helpful to government on emergencies, nor to traders, in accommodating them with money.

The ſecurity of the ſecond kind conſiſts in the certain knowledge of its fund or ſtock, the ſolidity of its inſtitution, and the incorruptible fidelity of its management; wherein it is always the intereſt of the concerned to give the publick the utmoſt ſatisfaction: And in this reſpect the bank of *England* muſt be ſecure beyond all apprehenſion to the contrary, as well on account of the great ſums they have lent to government, upon the faith of the *Britiſh* parliament, which is ſufficient always to keep them above all ſuſpicion of failure, as from the known ſkilful and profitable management of thoſe who have been ſucceſſively concerned in the direction. Beſides, as an incorporated body, they are not, like private men, ſubject to death. And as this kind of bank has all the conveniences of the former, it has alſo this beyond it, that its capacity of lending money is an invaluable accommodation to the community, ſince it will always have a tendency to keeping the intereſt of money low, and be an effectual and permanent check to *uſury*, which is the greateſt bane to trade and navigation.

Of the Bank of GENOA.

THE moſt conſiderable corporate body in the republick of *Genoa*, is that which is called *St. George*'s bank, the moſt ancient eſtabliſhment of the kind in *Europe*, though the date of its inſtitution is not certainly known: But we may be aſſured it is of much greater antiquity than that of *Venice*, the Republick of *Genoa* being founded *A. D.* 950. The fund was conſtituted from ſuch branches of the public revenue as were ſet apart by the government, and ſuch ſums as ſhould be borrowed during the exigencies of the commonwealth; which fund hath never been violated, under the greateſt troubles and perplexities of the ſtate. The adminiſtration of this bank being for life, and partly in the hands of the citizens, gives this body a great authority in the ſtate, and a powerful influence over the people. This bank is generally conſidered as a great load to the ſtate, and as a kind of inferior ſenate, which breaks the uniformity of their ariſtocratic government. The people, however, receive no ſmall advantage from it, both as it is a check to their ariſtocracy, and diſtributes the power among more private members of the republick; and while the ſtate kept itſelf clear of the quarrels of the great belligerent powers of *Europe*, this bank maintained a circulation for the ſupport of publick credit and commerce; but having unhappily taken part in their wars in the laſt and the preſent century, they exhauſted their publick treaſure, their commerce declined, and with it their publick credit, and the reputation of *St. George*'s bank, which will never recover its original importance.

Of the Bank of VENICE.

THIS is commonly called *Banco del Gero*, on account of the continual rotation of its caſh, and is properly a receptacle, or office, for publick depoſits, or a general and perpetual caſh currency for all merchants and traders.

It was eſtabliſhed by a ſolemn edict of the republick, which ordains, that all payments, as well of large purchaſes, as bills of exchange, ſhall be only made in bank; and that all debtors and creditors ſhall be obliged to pay and receive their money there, which is effected by a ſingle transfer from the accounts of the one to that of the other; ſo that the credit and debit only change names, without any real or effective money being paid.

However, payments are ſometimes made in caſh, particularly for the retail buſineſs; or when ſtrangers inſiſt on ready money, or ſome perſons are better pleaſed to have their funds in their own keeping: and the neceſſity of ſometimes making theſe effective payments, was the occaſion of opening a ready-money office, for thoſe who required it; and it has been experienced, that this current caſh has not cauſed any ſenſible diminution in the funds of the bank; but, on the contrary, the liberty of withdrawing the money at the proprietors pleaſure, has rather increaſed than leſſened them.

By this means the republick, without reſtraining the liberty of trade, and without paying any intereſt, makes herſelf miſtreſs of five millions of ducats, at which the funds of this bank are fixed, and at the ſame time ſupplies the neceſſities of ſtate, without being obliged to have recourſe to extraordinary impoſitions; and the good order always obſerved in the bank's adminiſtration, for which the republick is ſecurity, has rendered its eſtabliſhment ſo ſolid, that there is room to judge it will laſt as long as the government itſelf.

In this bank the writings are kept, in *liras*, *ſoldi*, and *denari de groſſi*, of which one *lira* is worth ten *ducats de banco*, or two hundred and forty *groſſi*, the ducat being compoſed of twenty-four groſſi.

The money of exchange is always underſtood to be bank ducats, which are imaginary, and a hundred of theſe make a hundred and twenty ducats current, ſo that the difference between bank and current ducats is twenty *per cent.* the brokers being prohibited to negociate at a higher price.

The bank is ſhut up four times a year, *viz.* the 20th of *March*, 20th of *June*, 20th of *September*, and the 20th of *December*; and it remains ſhut each time for the ſpace of twenty days: However, this does not prevent their negociations, as well in ready-money as bank, to be wrote off at its opening.

The bank is likewiſe ſhut upon extraordinary occaſions, *viz.* eight or ten days at the carnival, and as long for Paſſion Week; it is likewiſe ſhut every *Friday*, when there is no holiday, to make their balance.

The bills of exchange drawn for the fairs, or otherwiſe, muſt all be payable in bank, and a ſeller cannot refuſe payment of his goods in the ſame manner, except by an agreement to the contrary.

Bills of exchange here have ſix days grace, and in default of payment, the proteſt muſt be made on the ſixth day, otherwiſe the holder ſtands to the damage; but from the moment the bank is ſhut, a debtor cannot be forced to the payment of bills, neither in ready-money nor otherwiſe, nor can be proteſted againſt for it, till on the ſixth day after the bank opens, except when there is a failure, in which caſe every one may uſe their diligencies, provided their bills are fallen due.

Of the Bank of AMSTERDAM.

THIS bank, formerly ſuppoſed to be the moſt conſiderable and richeſt in *Europe*; was eſtabliſhed on the 31ſt of *January*, 1609, by the authority of the States General, under the direction of the burgomaſters of this city, who are ſecurity for the ſame, and conſtituted themſelves perpetual caſhiers for its inhabitants, to whom it is of the greateſt conveniency and ſervice, as millions may be paid in a day, by the ſimple aſſignations of a draught on it, without the intervention of any real caſh.

The funds of this bank are related to be ſo great as is hardly credible, many authors quoting their value to be, at leaſt, that of three thouſand tons of gold, and theſe rated at a hundred thouſand guilders *per* ton, make, at only thirty-five ſhillings *per* pound ſterling, the prodigious ſum of 58,571,406*l.* but as this value is unaſcertained, I ſhall give Sir *William Temple*'s opinion of it inſtead of my own, who ſpeaking of this bank,

bank, in his remarks on the ſtate of the United Provinces, ſays, "In the city of *Amſterdam* is the bank, ſo celebrated in all the world, on account of the greatneſs of its treaſure, which exceeds that of all others hitherto known, real or imaginary: The place where it is lodged is a great vault under the town-houſe, provided with doors, locks, and every other ſecurity neceſſary for its ſafety and preſervation; and it is certain, that when any one goes to ſee the bank, he will find there a very great treaſure in bars and ingots of ſilver, in plate, and an incredible quantity of ſacks full of metal, ſaid to be gold and ſilver, as I believe, in effect they are: though as there are none but the burgomaſters who have any direction in this bank, and as there is no one who keeps any account of what is brought in or carried out at different times, it is impoſſible to know, or even gueſs with any exactneſs, the proportion there is between the real and imaginary treaſure of it; as it does not ſolely conſiſt in the effective gold and ſilver, but alſo in the credit of the city, and of the ſtate, of which the funds and revenues are as great as that of ſome kingdoms, and it is obliged to be anſwerable for all the money brought in: The greateſt payments made between the merchants of this city, are in bank bills, ſo that it may be ſaid, that this bank is properly the general cheſt, in which every one incloſes his money, becauſe they deem it there to be in greater ſecurity, both for paying and receiving, than if they had it in their own coffers; and the bank is ſo far from being obliged to pay an intereſt on the money depoſited in it, that what is there is worth more than the current money, in which ſmall payments are handily made, becauſe it neither admits nor receives any caſh, but of the beſt and moſt valuable ſpecies, and thoſe that are moſt current, as well in *Germany* as in the *Low Countries*."

By its eſtabliſhment, it is ordained, that the payment of bills of exchange, and wholeſale goods, ſhall be only in bank, except the ſum be under three hundred guilders, and nothing leſs than this can be wrote into bank, without paying ſix ſtivers, except it be by the *Eaſt* and *Weſt India Companies*, who are exempt from this duty, and may write in what ſmall ſums they pleaſe, ſo that the debtor is obliged to carry his money in there, and the creditor from thence to receive it.

The payments are made by a ſimple transfer, or aſſignation of one to the other, ſo that he that was creditor on the bank books before, becomes debtor from the moment he has aſſigned any ſum to another, who is wrote down as creditor in his room.

Although the bank of *Amſterdam* has no account of current caſh open like that of *Venice*, this does not hinder, notwithſtanding its regulation, but that it ſometimes makes payments in ready-money; and there are particular caſhiers without the bank, who make the payments for an eighth *per cent.* that is to ſay, two ſtivers and a half for a hundred guilders.

This contravention is tolerated as beneficial to trade, foraſmuch as ſometimes one is obliged to make a payment in effective money, more eſpecially in retail affairs; and it often happens that ſome perſons are better pleaſed to have their caſh ready for uſe elſewhere, than in the publick bank, either for negociations or to pay bills of exchange, when their expreſs tenor is to be paid not in bank, but in ready current money.

It is by this bank, that the city of *Amſterdam* is ſupported in ſo much ſplendor and magnificence, and without interrupting commerce, poſſeſſes the greateſt part of the caſh of its inhabitants, who are not leſs rich for having their fortunes in the bank, as theſe they may convert into ready-money whenever they pleaſe, and again bring them into bank when it ſhall be agreeable.

And to carry on this ſort of buſineſs or exchange, an application need only be made to certain merchants, or particular caſhiers, who are commonly to be met with between ten and eleven o'clock at the *Dam*, or before the town-houſe or bank, with whom the negociation may be adjuſted for an agio, which they endeavour to effect on the higheſt terms when they are ſellers, and on the loweſt they poſſibly can when they buy.

The difference between buying and ſelling is ordinarily from a ſixteenth to an eighth *per cent.* and the *agio* varies from three to ſix *per cent.* ſometimes more, and at other times leſs, according to the difference in exchange or the ſcarceneſs of the ſpecie.

When

When a payment is made in *ducatoons*, or *rixdollars*, and not in a ſmall kind of money, leſs is given for the agio, becauſe the large coins are received at the bank.

Theſe money negociations are likewiſe made at the *Bourſe*, or at home, between merchant and merchant, with or without the intervention of brokers, who have one *per mil.* for their pains, paid equally between the buyer and ſeller.

To have an account opened for a perſon in the bank, he muſt pay ten guilders for once only.

The bank only receives ducats of gold, ducatoons, rixdollars, old louis d'ors, and other ſuch-like ſpecies, and they have reduced the ducatoons to ſixty ſtivers inſtead of ſixty-three, as they paſſed in ready or current money, the rixdollar to be forty-eight from fifty, and other ſorts of coins in proportion.

The bank never engages for the ſpecie it receives, but on the footing of five *per cent.* under their common value in current money, *viz.* the ducatoon at the value juſt now mentioned, which is the true original of the agio, and which conſequently muſt be five *per cent.*

Ingots of gold and bars of ſilver are likewiſe depoſited there, of which the price is regulated according to their value after the aſſay, which is made by the city aſſayer, and all ſorts of money, and ſpecies of gold and ſilver are alſo depoſited, and principally dollars, for which the bank gives its receipts, called *receipts of Mexican dollars*, and which are commonly negociated at Change.

Thoſe who have caſh in bank may draw it out whenever they pleaſe, on paying a ſixteenth *per cent* for the care of it; and if at the time of taking it out, the agio ſhould be under five *per cent.* the treaſurer will pay the difference, foraſmuch as that when it was received, there was charged on it the five *per cent.*

The books of the bank are kept in guilders, ſtivers, and pennings, of which twenty ſtivers make a guilder, and ſixteen pennings or deniers a ſtiver.

Any one drawing on the bank more than he has there, incurs a penalty of three *per cent.* on the ſum he overdraws.

The bank is ſhut up twice a year, *viz.* in *January* or *February*, and in *July* or *Auguſt*, and remains ſo eight, ten, or fifteen days, during which time the books are balancing.

It is ſhut up beſides, on the feaſts of *Eaſter*, the *Aſcenſion*, and *Chriſtmas*, and on faſt days, and about the 22d of *September*, when the fair begins.

If the ſix days of grace, which are allowed on bills of exchange, happen to expire whilſt the bank is ſhut, the bearer of them is in time to proteſt them, in caſe of non-payment, the ſecond or third day after its opening.

When any one who has an open account with the bank, happens to die, his heirs muſt prove by a good title, the right they have to demand the paſſing the ſums to their credit, which are due to the deceaſed.

Whenever any difference happens between merchants and tradeſmen about the bank, it ſhall be ſummarily ſettled by the commiſſioners named for this purpoſe by the magiſtracy of *Amſterdam*.

There are ſome certain days in the year, when the money may be diſpoſed of the very moment it is brought in, which is often improved by vain and deſigning men, who, without having a farthing property in that fund, get large ſums credited on their account, though the debtor ſide cancels them immediately, yet by this game they either flatter their pride or advance their credit, as the debit ſponge is not ſeen by many.

The bank makes no negotiable bills, but, as before-mentioned, gives receipts for effects depoſited, which may be ſold; for example, a perſon having one thouſand louis d'ors of the ſun, which are commonly from guild. 11 8*ſt.* to 11 14*ſt.* current money, and wanting ready caſh, endeavours to ſell his gold, for which he is only offered guild. 11 8*ſt.* but reſolving not to admit this low price, in hopes of a ſpeedy riſe, he carries them to the bank, which takes them on the footing of guild. 10 14*ſt.* each, making guild. 10,700 bank money, which he may diſpoſe of at an half *per cent.* leſs than he muſt allow for ſix months care of it, as accuſtomary; and if during that time, the louis are in demand, he withdraws them, or ſells his receipt, as he thinks proper: But if on the contrary they ſtill keep low, though with an appearance of ſoon riſing, he

carries

carries his receipt to the bank, where they debit his account in the proper office, guild. 53 : 10*ſt*. for the half *per cent.* mentioned in the receipt, and on theſe terms he may prolong the depoſit to the time it ſuits him to withdraw it, paying every ſix months the aforeſaid ſum; and this is the only caſe in which the bank gives receipts that are negotiable; and if the aforeſaid one is ſold, the buyer, before he can make uſe of its value, muſt reſtore to the bank the 10,700 guild. advanced, and the half *per cent.*

No ſeiſure can be made of money in the bank, and whenever a ſum is to be entered, in which there is pennings, it is never wrote in with more nor leſs than 8, ſo that if there be 7, 9, 10, 11, or 12, 8 only are inſerted; but if there be above 12, then there is wrote in a ſtiver.

There were formerly only four book-keepers in the ſaid bank, and as many comptrollers, but ſince, ſome have been added, and every one in their turn, receives the notes that have been entered in the books, to diſtribute to others according to their number; for example, the firſt book contains four or five hundred leaves, and the four books only make an end of the year, and are put on the archives after balancing.

If a man wants to know what has been wrote in on his account, he muſt go to the bank between ſeven and eight in the morning, and if he lets this time relapſe, he muſt pay two ſtivers, and if he delays it till after nine, he muſt pay ſix ſtivers.

The officers of the bank are paid by the city, and all that is received for correcting accounts, retardation of hours, and forfeits, is for the poor, as the fractions of the ſtiver are for the comptrollers.

After opening the bank from the time of balancing, all thoſe who have open accounts ought to make a note of what remains due to them, and therein they ſhould mark the folio of the bank book, in which their account is, how many ſums they have got written, if any, ſince the preceding account, their name and ſurname, and then aſk the commiſſioners who have the page of their account, whether that remainder or balance agrees with the bank books, which he tells them, and alſo whether the folio is continued or changed; if the ſum diſagree, he alſo informs them of it, and in this caſe he muſt make an extract of the bank account as it ſtands in your book, to examine it, and ſee from whence the error or difference of the ſums proceeds, for which verification twelve ſtivers are generally paid, a little more or leſs: The account being thus examined, they return it when aſked for, and if they find it does not agree with that ſtated in the bank book, on finding the miſtakes, they note them, if otherwiſe, they put at the foot of the ſaid account *ſeen*, or elſe, *agrees with book-keepers*, and afterwards they put the name and ſurname of him to whom it belongs, with the exact balance, deducting one ſtiver for every ſum, which he has written to the credit of his new account, which he ought to note conformably in his own books. This verification is made twice a year, under penalty of twenty-five guilders mulct; and although it has not been poſſible to examine the account which they have in bank, they may however, at the opening of *it*, get the ſums wrote to the bearers of bills of exchange, and for merchandizes bought of the *India* companies, provided that it be entered as ſome part, and if they have got too much wrote, they will be ſubject to the fine of three *per cent.* as aforeſaid; but this privilege is only for that day; for in regard of other days, if you are ſure that you have caſh wrote on to the credit of your account, it may be diſpoſed of the ſame day, and wrote off to another and another.

When traders or merchants, who have accounts with the bank, cannot go themſelves to get them examined as aforeſaid, they may ſend ſome other in their room, with a power, made in the ſame manner as is before directed, for thoſe perſons carrying the notes to be wrote on.

When a perſon's bank account is full, and the book-keepers are obliged to open another, from the time of his being advertiſed thereof, he ought to take care to go to ſee whether the articles agree, as he does at the opening of the bank.

The book-keepers ſend daily to thoſe who deſire it, a note of the ſums that have been wrote in to their credit; and for which they are paid ſix, eight, or ten ducatoons *per ann.* from each merchant or banker, who has this advice given him, which is divided among the ſaid book-keepers, after deducting the expence of a ſervant they keep for this purpoſe.

The bank obſerves the following rules, which it is neceſſary for thoſe who keep caſh there to be apprized of.

1ſt. No

1ſt. No one can diſpoſe of his money paid in till the next day, except he pays half *per cent.* upon the ſum he deſires to draw out the ſame day; for example, if I have got wrote in 6000 guilders, and have a mind to draw out 4000 of them, the ſame day, my note will not paſs, neither then, the ſubſequent day, nor afterwards, till I have paid twenty guilders for the ſaid half *per cent.*

2dly. There are, however, commonly three days in the year, as has been juſt hinted before, on which the money may be diſpoſed of that is brought in the ſame day; viz the ſecond day after opening the bank, when it has been ſhut for balancing; and at the feaſt of Pentecoſt.

3dly. If any more is diſpoſed of than is in bank, the penalty of three *per cent.* and the overdraft muſt be paid before any note.

4thly. As the bank ſhuts up twice a year, all who have accounts open muſt balance with it, in ſix weeks after opening, on penalty of twenty-five guilders.

5thly. When an account is once opened in the bank, whatever enters to its credit coſts nothing; and formerly only a ſtiver was charged for every ſum that went out, or was paid to another; but as buſineſs was conſiderably augmented in the year 1714, and occaſioned a great number of clerks to be added to the bank, for the diſpatch of the notes, brought in to be wrote, it was ordained, that inſtead of one ſtiver, two ſhould be paid from the firſt of *February*, 1715, which has continued ever ſince, and is always charged the firſt article in a new account.

When it happens that, through miſtake or forgetfulneſs, a man writes off a ſum to one he is not indebted to, inſtead of to him he is owing to, although he immediately gives advice of the error, and that the ſum is not yet entered in the bank books, he cannot withdraw his note from the bank by acknowledging he was miſtaken, not even though he carries the perſon with him in whoſe favour the note is wrote, to declare that the drawer does not owe him any thing, the book keepers will ſay that he muſt pay, as it is wrote in the books, and that, if he has made a miſtake, the perſon in whoſe favour the error was committed, has only to return it the next day, wrote in on the account.

All thoſe who have any thing to write in bank, are obliged to carry their notes themſelves, in the ſame manner as thoſe to whom their accounts are to go and demand the balance; or if they will ſave themſelves the trouble, they muſt empower one of their counting-houſe to act for them, which will authoriſe their doing the one and the other; this procuration, as has been obſerved before, coſts thirty-two ſtivers, which is paid for down, and muſt be renewed at the end of a year and ſix weeks; and if it ſhould happen, that a man is obliged to make a pretty long voyage, and has given an authenticated procuration to his wife, or ſome other perſon, to make all ſorts of payments, without having left a proportional number of bank notes, ſigned in blank, to the ſums he imagines he may have to pay during the voyage, if the perſon to whom he has given the ſaid power, ſigns the bank notes, without having the letter of attorney regiſtered there, none of them will paſs; and in this caſe, the perſon ſo authorized muſt carry and leave an authentick copy of his power at the bank, and that he ſigns all the notes with his name, *adding*, by procuration of *ſuch a one*; and the noting the ſaid power coſts fifty ſtivers, which is paid out of hand.

The time of writing in bank, is from ſeven or eight in the morning to eleven, but after eleven to three, every note carried in, will coſt ſix ſtivers, and after three, none are admitted.

When a man who has an account with the bank is ill, and unable to ſign his draughts, or to go there to ſign a power, the perſon who tranſacts his affairs ought to inform the bank of his diſorder, and incapacity to attend there, for either of theſe purpoſes, though he is deſirous of paying what he owes; in which caſe, a declaration drawn out by a notary, and ſigned by the phyſician, and one or two of his neareſt neighbours or relations, ſhould be carried to the bank, which on receipt of it, ſends a ſervant to ſee in what condition the ſick perſon is, and if he finds him really as is declared, his agent is authoriſed to ſign the draught, in the ſame manner as if he had ſigned the letter of attorney at the bank; but if the infirm is in a condition to ſign, he that is impowered may requeſt the book keepers to draw out a procuration for that purpoſe, and to ſend it with him to be ſigned, which they do, accompanied by a ſervant of the bank, who car-

ries the book of procurations with him to the ſick man, who ſigns that drawn out for him in the book, in the preſence of the bearer, and from the time that a power is thus executed, he that it is made to, may ſign and carry the notes to the bank, although he has not yet got the extract of the power, which oftentimes is not delivered in eight or ten days; but when once the bank has delivered it, he is obliged always to ſhew it when he carries the draught there, or demands a balance; if the ſick man dies after executing the power, and before it is delivered to him in whoſe favour it is made, it will not be delivered to him at all, becauſe the perſon being dead, his procuration is of no effect.

When any one who has an account in the bank is dead, after having made a will, his heirs, or the guardians he has appointed, muſt carry to the bank an authenticated copy of the ſaid will, paying fifty ſtivers down for noting it; at the ſame time they deſire to know the balance of the deceaſed's accounts, to ſee whether that of his books correſponds with the bank, and they may have the balance tranſported to a freſh account, either in the name of the widow, heirs, their guardians, or the executors, without its coſting them the ten guilders, which is always paid for opening a new one.

But if one who keeps caſh at the bank dies inteſtate, thoſe who pretend to be his heirs, or meddle with the ſucceſſion, muſt firſt be authorized by the proper judges, and bring a copy of the ſentence to the bank, before they will be permitted to diſpoſe of the deceaſed's balance.

The agio has been always fluctuating, ever ſince the bank's eſtabliſhment, though not in ſo great a degree of late years as formerly; in the year 1693, it was up to twelve and thirteen *per cent.* on account of the bad ſchillings of ſix ſtivers which were reduced to five and a half; and at the beginning of the month of *April*, in that year, after the diminution, it returned to two and a half, and as high as ſix *per cent.* it afterwards fell and roſe till the year 1703, when it was down to one and a half and two *per cent.* but ſince then it has got up again, and commonly paſſes now from four to five *per cent.*

During the heighth of the war between *France* and the *United Provinces*, in the year 1672, many who had caſh in the bank were eager to withdraw it, believing that if the *French* king, already maſter of *Utrecht*, ſhould become ſo of *Amſterdam*, they would loſe it all; and this was refuſed to none: But ſome impatient ones, imagining that the funds would not be ſufficient to pay ſuch a great number of creditors, found people who ſalved or cured this imaginary ill, by giving them ready money for four or five *per cent.* loſs, which occaſioned the bank money to become on a par with the current, and even under; but affairs were afterwards ſettled in the manner as at preſent.

I have already mentioned that the bank's receiving none but the fineſt coin, and theſe at about five *per cent.* under their current value, is the occaſion of the *agio*, or more properly the *agio* itſelf; and as this difference is readily to be found by *Practice*, or the common *Rule of Three*, I judge my enlarging thereon would only be ſuperfluous.

Of the Bank of ROTTERDAM.

THIS Bank is not ſo conſiderable as that of *Amſterdam*, of which we have been ſpeaking, though the difference in its government is very little. It was eſtabliſhed the 18th of *April*, 1635, and keeps accounts with thoſe merchants who chuſe it, both in bank and current money; the firſt to pay all foreign bills, which are in bank money, and the ſecond for the diſcharge of negociations made at *Rotterdam* on foreign parts, which are always in current money.

The bank daily regulates the agio on its caſh, which is conſtantly fixed to a pillar of the Bourſe, that every one may know it; and as the reſt of its regulations are ſimilar to the laſt bank treated of, I ſhall not detain the reader longer upon this.

Of the Bank of HAMBURGH.

ALTHOUGH the funds of this bank are not near ſo conſiderable as thoſe of that of *Amſterdam*, the integrity and exactneſs with which every thing is managed has given it a great reputation over all *Europe*, and more particularly in the *North*.

The citizens and corporation are the ſureties for this bank, in which the ſenate has no inſpection; and the directors, being four in number, are choſe by plurality of votes from among the principal of the freemen.

Their duty is to ſee that the regulations be punctually obſerved, and to furniſh the caſhiers with money when any payments are to be made, which however is done without touching the treaſure, the directors taking care to provide it from other funds.

In regard to the capital of this treaſure, it is ſuppoſed to be very conſiderable; but as the book-keepers take an oath not to diſcloſe the entries and extracts of the bank, nor what each particular depoſits, it is very difficult to conclude any thing with certainty; and this obligation to ſecrecy hinders a creditor from knowing what any one has in the bank, ſo that no ſeizure can be made there.

The book-keepers, who, like the directors, are four in number, are obligated to give the comptrollers two balances weekly; and none but citizens are permitted to have an account in the bank, and from ſuch only it will receive any caſh by way of depoſit, without any intereſt; and it is by theſe notes on the bank that they have the conveniency of paying their bills of exchange, and for the purchaſe of many ſorts of merchandize, by only making a transfer of their value.

Nothing leſs than an hundred mark lubs can be wrote into bank, and two ſchillings are paid for every ſum not exceeding three hundred marks; but whatever is above this may be wrote in *gratis*.

There are certain hours in the day appointed for writing into bank, *viz.* from ſeven to ten in the morning; but if any one has a mind to write in from ten to one, and from three to five in the afternoon, he may do it by paying two ſchillings for each ſum; and it is alſo in the ſame morning hours that a perſon may inform himſelf, whether the ſums due to him have been entered, which he may alſo do from ten to one, on paying two ſchillings lubs to the book-keeper; to avoid which, there are many merchants who agree with the bank for a yearly ſtipend, to have the liberty of writing into the bank at any hour they pleaſe from ſeven to one, which is commonly from twenty to forty mark lubs, according to the extent of the merchant's buſineſs, and the quantity of affairs he has to tranſact.

When any one has a mind to open an account with the bank, he muſt pay fifty rixdollars of three marks, or forty-eight ſchillings lubs.

The bank is ſhut every year from the laſt of *December* to the 15th of *January* following, and the ſpecies that are commonly received in it are rixdollars, with their parts of halves, quarters, and eighths, which are generally worth an eighth, often a quarter, and even ſometimes a half *per cent.* more than the money which is wrote by notes into bank; *that is*, if there is a want of rixdollars in ſpecie, an eighth, quarter, and as far as a half, muſt be wrote in the bank more than the money received; but on the contrary, if one has caſh in ſpecie to put in, the bank only makes good an eighth, and ſometimes a quarter *per cent* benefit.

The bank-books and writings are kept in marks, ſchillings, and deniers lubs; and it is to be obſerved, that the fractions are never wrote under one ſchilling or ſix deniers.

Thoſe who have effects in jewels, precious ſtones, ſilver, &c. and want to raiſe money on them, may carry them to the bank, where they are exactly inventoried, a loan is advanced at a very moderate intereſt, and they remain depoſited as a ſecurity for the payment of principal and intereſt in ſix months, which, if not complied with, the things are ſold at the bar of the bank to the higheſt bidder, after having adverti ſed the day of their ſale and delivery.

Of

Of the BANK *of* ENGLAND.

WHEN we conſider the vaſt extent, great variety, and national importance of the buſineſs of the BANK of ENGLAND; the ſolidity, permanency, and univerſality of its domeſtic and foreign credit; the known magnitude of its capital; the reputed ſtores of wealth in gold and ſilver ſpecie, and bullion, depoſited within its walls; and the diſcreet adminiſtration of the whole; we may boldly affirm, that no bank of any other nation in the known world, can be placed in competition with this noble inſtitution.

It was originally founded on a charter granted by *William* III. of glorious and immortal memory, was ingrafted into the reſtored conſtitution of our country by an act of parliament, paſſed in the 5th year of the reign of that illuſtrious monarch and his good queen *Mary*, and improved and extended by divers ſubſequent acts of the legiſlature. The ſubſtance of which acts, in order that all the powers, rights, and privileges veſted in the corporate body, and all the buſineſs tranſacted by, or to be tranſacted with the company, may be clearly underſtood—is given correctly in this, and the following pages.

Every year, beginning from the 1ſt of *June*, 1694, the ſum of 140,000*l.* out of monies to ariſe by duties of tonnage, *ſince expired*, and by an exciſe on beer, &c. hereby granted, *being a moiety of the rates granted by* 2 Will *and* Mary, *St.* 2. *Cap.* 10. ſhall be a yearly fund for the annuities in the act mentioned, and for the purpoſes hereafter expreſſed, and any deficiencies to be ſupplied out of the unappropriated revenues. 5 and 6 *W.* and *M.* C. 20 S. 17.

For raiſing 1,200,000*l.* part of 1,500,000*l.* *granted by the act*, the yearly ſum of 140,000*l.* ſhall be kept apart in the receipt of Exchequer, and paid as in the act is directed. S. 18.

Their majeſties, by commiſſion under the Great Seal, may appoint perſons to take ſubſcriptions on or before the firſt day of *Auguſt*, 1694, by any perſons, natives or foreigners, &c. for raiſing and paying into the receipt of the Exchequer 1,200,000*l.* part of the ſum of 1,500,000*l.* and the yearly ſum of 100,000*l.* part of the ſaid yearly ſum of 140,000*l.* ſhall be applied to the uſe of ſuch perſons, as ſhall make ſuch ſubſcriptions and payments in the proportion hereafter mentioned, *viz.* each weekly payment ſhall, by the auditor of the receipt, be divided into five-ſeventh parts, and two-ſeventh parts, which five-ſeventh parts are appropriated towards the payment of the ſaid yearly ſum of 100,000*l.* and ſhall be paid to the contributors, raiſing the ſum of 1,200,000*l.* S. 19.

Their majeſties, by letters patent, may appoint in what manner the ſaid ſum of 1,200,000*l.* and the ſaid yearly ſum of 100,000*l.* or any part thereof, may be transferred to ſuch perſons as ſhall accept of the ſame, and incorporate ſuch ſubſcribers, to be one body corporate, by the name of *The Governor and Company of the Bank of England*, and they ſhall be capable to purchaſe and retain lands, &c. S. 20.

The commiſſioners of the treaſury, &c. are required, without further warrant, to direct their warrants yearly, for the payment of the ſaid 100,000*l.* to the contributors of the ſaid 1,200,000*l* and the auditor of receipt of the Exchequer, and all other officers of the Exchequer, are enjoined to iſſue the ſaid monies without fee, and under the penalties inflicted upon any officer for diverting any money appropriated by this act. S. 22.

The corporation ſo to be made, ſhall not borrow, under their Common Seal, any further ſum than 1,200,000*l.* ſo that they ſhall not, at any one time, owe more, unleſs by act of parliament, upon funds agreed in parliament; and if any more ſhall be borrowed under the Common Seal, every member of the ſaid corporation ſhall, in their private capacities, be liable in proportion to their ſeveral ſhares to the re-payment of ſuch monies; with intereſt; and in ſuch caſe, an action of debt may be maintained in any of the courts of record at *Weſtminſter*, by the creditors, to whom any ſuch ſecurity, under the Common Seal of the corporation, ſhall be made, againſt all, or any of the members of the corporation, in proportion to their ſhares, wherein judgment may be recovered

recovered, as if ſecurity were given in their private capacities, any agreement to the contrary notwithſtanding. 5 and 6 *W* and *M*. S. 26.

The corporation ſhall not trade, or ſuffer any perſon in truſt for them to trade, with any of the effects of the corporation, in the buying or ſelling of any merchandize or goods; and every perſon ſo trading, or by whoſe order ſuch trading ſhall be made, ſhall forfeit treble the value of the goods and merchandize traded for, to ſuch perſon as will ſue for the ſame in the courts of record at *Weſtminſter*. S. 27.

But the corporation may deal in bills of exchange, and in buying or ſelling bullion gold or ſilver, or in ſelling goods mortgaged to them, and not redeemed within three months after the time, or ſuch goods as ſhall be the produce of lands purchaſed by the corporation. S. 28.

All bills obligatory and upon credit, under the ſeal of the corporation, may, by endorſement thereon under the hands of the proprietors, be aſſigned, and the aſſignee may ſue in his own name. S. 29.

If the governor, or other members of the corporation to be eſtabliſhed, ſhall, upon account of the corporation, purchaſe any lands or revenues belonging to the crown, or lend to their majeſties, their heirs, or ſucceſſors, any money by way of anticipation on any part of the revenue, other than ſuch part only on which a credit of loan ſhall be granted by parliament, then the ſaid governor or members ſo conſenting to lend, being thereof lawfully convicted, ſhall forfeit treble the value of ſuch ſum ſo lent, whereof one-fifth part ſhall be to the informer, to be recovered in any court of record at *Weſtminſter*, and the reſidue to be diſpoſed of by parliament. S. 30.

Amerciaments, fines, and iſſues againſt the ſaid corporation, upon account of any ſuits to be brought againſt them, ſhall not be pardoned; and if ſuch be eſtreated into the Exchequer, the officers of the Exchequer, who are to pay the yearly ſum of a hundred thouſand pounds, may, out of that, detain ſo much as the ſaid amerciaments, fines, or iſſues amount unto. S. 31.

If any perſon ſhall obtain a judgment againſt the corporation, and ſhall bring execution thereupon unto the officers of the Exchequer, then the ſaid officers are required to pay the ſum in the execution mentioned to the plaintiffs, or their aſſigns; and the ſaid officers may detain ſo much of the yearly ſum of a hundred thouſand pounds as the debt ſhall amount unto. S. 32.

Any member of the Houſe of Commons may be a member of this corporation, notwithſtanding ſtat. 5 and 6 *W*. and *M* cap. 7. S. 33.

The preſent ſtock of the bank of *England* ſhall be enlarged by new ſubſcriptions. 8 and 9 *Will.* III. Cap. 20. S. 20.

Before ſuch enlargement, the ſtock ſhall be computed by ſeven of the preſent members, and ſeven of the new ſubſcribers; and if the clear ſtock amount not to one million two hundred thouſand pounds, the old members to make it up in tallies, orders, bank-bills, or notes; but if it exceed one million two hundred thouſand pounds, then the ſurplus to be divided among the old members. S. 21.

Seven commiſſioners appointed by his majeſty for that purpoſe, ſhall take ſuch new ſubſcriptions before the 24th of *June*, 1697. S. 22.

Four-fifths of each ſubſcription ſhall be, at the time of ſubſcribing, anſwered by tallies and orders, upon the firſt, third, or fourth aid of four ſhillings *per* pound, the quarterly poll, three-fourths of the cuſtoms, the ſalt act, two-thirds of the additional exciſe, the additional impoſition, the ſtamp act, the three hundred thouſand pounds *per ann.* on tonnage and poundage, the duties on marriages, births, burials, &c. on wines, vinegar, and tobacco, &c. and joint ſtocks, &c. on low wines, &c. on the ſix thouſand pounds *per* week out of the exciſe, or the five hundred pounds *per* week out of the poſt-office; and the other fifth part in bank-bills or notes. S. 23.

After the 24th of *June*, 1697, intereſt of eight *per cent. per ann.* ſhall be allowed for the tallies and orders ſo ſubſcribed, out of the funds granted by this act, viz. *the Tonnage and Poundage*; *the Duties on Wine and Vinegar, granted by* Stat. 1 Jac. II. Cap. 3. *the Duties on Tobacco and Sugar*, by 1 Jac. II. Cap. 4 *the additional Impoſitions on Goods and Merchandizes*, by 2 Will. *and* Mar. Stat. 2 Cap. 4. *and* 4 *and* 5 Will. *and* Mar. Cap. 5. *the Stamp Act*, 5 *and* 6 Will. *and* Mar. Cap. 21. *and the Duty on Houſes*, by 7 *and* 8 Will. Cap. 18. S. 24.

The

The intereſt payable to the bank upon ſo many tallies and orders as the bank is already poſſeſſed of, whereof the principal ſhall be equal to the ſaid fifth part ſubſcribed in bank-bills or notes, ſhall be likewiſe augmented to eight *per cent.* 8 and 9 *Will.* III. Cap. 20. S. 25.

The new ſubſcribers ſhall, after the ſaid 24th of *June*, be members of, and united to, the Bank of *England*. S. 26.

During the continuance of this bank, no other bank, or fellowſhip in nature of a bank, ſhall be erected, or permitted by act of parliament. S. 28.

The intereſt due on tallies and orders, ſubſcribed into the bank, ſhall be accepted as ſo much principal money. S. 29.

The bank may borrow by bills, over and above the one million two hundred thouſand pounds, to which they were at firſt limited, any ſum not exceeding the ſum ſubſcribed, under an obligation of paying the ſaid bills in money upon demand; and in default thereof, on demand made at the bank between nine and twelve in the forenoon, and the default proved by affidavit in writing before one of the barons of the Exchequer, the ſaid bills to be paid at the Exchequer, out of the firſt money due unto the bank, other than the fund of a hundred thouſand pounds *per annum*; but theſe bills ſhall be diſtinguiſhed from the debts contained within the ſaid one million two hundred thouſand pounds, and expreſſed to be made by virtue of this act. S. 30.

The capital ſtock and fund of the ſaid bank ſhall be exempt from taxes. S. 31.

After completing the ſaid ſubſcriptions, the intereſt of all tallies and orders ſubſcribed, together with the ſaid hundred thouſand pounds *per ann.* ſhall be applied to the uſe of the members of the bank, proportionably to each member's ſhare therein. S. 32.

The ſtock of the bank ſhall be accounted a perſonal, and not a real eſtate, and ſhall go to executors, and not to heirs. S. 33.

No contract or agreement, either by word or in writing, for buying or ſelling of bank ſtock, ſhall be good in law or equity, unleſs it be regiſtered in the books of the bank within ſeven days, and the ſtock be transferred within fourteen days. S. 34.

No act of the bank ſhall forfeit the ſtock thereof, but the ſame ſhall be ſubject to their debts. S. 35.

It ſhall be felony without benefit of the clergy, to forge or counterfeit the common ſeal of the bank, or any ſealed bank bill, or any bank note, or to alter or eraſe any ſuch bills or notes. S. 36.

The officers of the Exchequer ſhall keep accounts of all monies appropriated to the bank, either upon the fund of a hundred thouſand pounds *per ann.* or any other parliamentary funds, or for tallies belonging to the bank; and ſhall duly direct, record, and make payment thereof, under the penalty of loſs of place, incapacity, and double damages. S. 37.

The monies ariſing by the continuation of the ſubſidy of tonnage and poundage, &c. of wines, vinegar, and tobacco, &c. by the additional impoſitions on goods and merchandizes; by ſtamped vellum, &c. by marriages, &c. and by the duties on houſes, from the times that the ſaid duties are ſeverally continued as aforeſaid, till the firſt of *Auguſt*, 1706; and by the ſurplus of the duties on wine, vinegar, and tobacco, &c. over and above the one million five hundred thouſand pounds credit given thereupon, and the intereſt thereof ariſing by the act 7 and 8 *Will.* III. Cap. 10. continued till the 29th of *September*, 1701; and alſo on houſes, after the re-payment of ſeven thouſand three hundred and eighty-two pounds, eleven ſhillings, and four-pence, borrowed thereon, by 7 and 8 *Will.* Cap. 18. and the intereſt thereof; and of all the bills ſigned at the mints for the ſix-pence *per* ounce upon plate, brought in between the 4th of *May*, 1696, and the 4th of *November*, 1696, granted for ſeven years, from the 25th of *March*, 1696; and upon ſalt, &c. after the re-payment of one million ſeven hundred and twenty-four thouſand pounds, borrowed thereon, and the intereſt thereof, ariſing by the act 7 and 8 *Will.* III. Cap. 31. ſhall be the general fund for making good the particular funds in this act expreſſed, and ſhall be applied accordingly. S. 38.

The monies ariſing by the ſaid general fund, after the 28th of *June*, 1698, as well by the ſaid duties on houſes, and additional impoſitions, as for the ſaid duties on vellum, &c. continued from the 28th of *June*, 1698, to the firſt of *Auguſt*, 1706, and for ton-

nage

nage and poundage, &c. continued from the 25th of *December*, 1699, to the firſt of *Auguſt*, 1706, and for marriages, &c. and for wines, vinegar, tobacco, &c. continued from the 28th of *September*, 1701, to the firſt of *Auguſt*, 1706, and by the ſaid ſurplus on wines, vinegar, and tobacco, &c. and on ſalt, &c. ſhall be applied towards principal and intereſt of the ſaid firſt, third, and fourth aids of four ſhillings *per* pound; the quarterly poll; the three-fourths of the cuſtoms; the duties on ſalt, &c. the two-thirds of the additional exciſe; the additional impoſitions; the duties on vellum, &c. on marriages, &c. on wines, vinegar, and tobacco, &c. and the three hundred thouſand pounds *per ann.* out of tonnage and poundage, in proportion to the reſpective deficiencies, as computed in this act. And every twenty-eight days, an account ſhall be made up at the Treaſury of all the monies brought in, applicable to the ſaid deficient funds, which ſhall be applied proportionably, as well to the bank of *England*, as other perſons intitled to principal and intereſt thereon. 8 and 9 *Will.* III. Cap. 20. S. 41.

Out of the ſaid general fund the intereſt due to the bank ſhall be made up eight pounds *per cent.* S. 43.

Where any revenue is appropriated by parliament for re-payments in courſe, the ſame ſhall be paid accordingly; but the new funds in this act ſhall be applied as hereby preſcribed. S. 44.

In caſe of judgment of forfeiture given againſt the bank, the yearly payments out of the Exchequer, and all the eſtate belonging to the bank, ſhall be veſted for three years in twenty-four perſons, to be choſen by the bank, who ſhall have power to receive the monies due to the bank, as if no ſuch judgment had been given; and to pay and diſcharge the debts and contracts, due at the time of ſuch judgment; after which, the ſurplus ſhall be divided amongſt the ſeveral members; and then the ſaid yearly payments ſhall be veſted in the particular members, in proportion to a liſt thereof, to be made up by the ſaid truſtees, and ſhall be aſſignable in a book to be kept by the auditor of the receipt. S. 45.

The bank may employ a clerk to copy the docquets of any extents, judgments, &c. in any of the offices of record at *Weſtminſter*, paying as for a ſearch only. S. 46.

No member of the bank ſhall be adjudged a bankrupt, by reaſon of his ſtock in the bank, nor ſhall the ſtock be ſubject to foreign attachment. S. 47.

The monies received out of the Exchequer for the bank, ſhall be divided among the members proportionably, for their particular uſe. S. 48.

The debts of the bank ſhall never exeeed their capital ſtock, under penalty of ſubjecting the ſeveral members, ſo far as their dividends received will extend, to ſatisfy the debts to any perſon, who may recover the ſame with treble coſts. S. 49.

If the ſaid funds for intereſt ſhall appear inſufficient, they ſhall be made up of ſuch aids, &c. as ſhall be granted in the then next ſeſſion of parliament; and if upon the firſt of *Auguſt*, 1706, or within three months after, the produce of the ſeveral aids, &c. ſhall not be ſufficient to diſcharge the principal and intereſt intended to be diſcharged by this act, the ſame ſhall be ſupplied out of ſuch aids, &c. as ſhall be granted the next ſeſſion of parliament. S. 50.

In all future elections, not above two-thirds of the directors of the preceding year ſhall be choſen. S. 52.

The bank of *England* ſhall make dividends of the monies which ſhall be received by them, by virtue of the tallies and orders which have been ſubſcribed into their ſtock, purſuant to the above act 8 and 9 *Will.* III. Cap. 20. once in every week ſix calendar months at leaſt. 9 and 10 *W.* III. Cap. 3. S. 4.

The governor and company of the bank of England, until they ſhall be re-paid all monies which they ſhall lend upon this act, for or in part of 420,000*l. being the laſt part of* 820,000*l. authoriſed to be borrowed on the weekly payment of* 3,700*l. out of certain branches of exciſe*, which intereſt for ſuch 420,000*l.* after the rate of ſeven *per cent.* ſhall not be obliged to make dividends of the monies to be received by them, by virtue of any tallies or orders ſubſcribed into their ſtock, in purſuance of the above act 8 and 9 *Will.* III. Cap. 20. but at ſuch times only as ſhall be ordered by a general court. 12 and 13 *W.* III. Cap. 12. S. 14.

During

During the continuance of the bank of *England*, it ſhall not be lawful for any other body corporate, or for other perſons united in partnerſhip, exceeding the number of ſix, in *England*, to borrow money on bills or notes payable at demand, or at leſs time than ſix months. *This clauſe is repeated in* Stat. 7 *Ann.* Cap. 7. S. 61. *and* Stat. 3. *Geo.* I. Cap. 8. S. 44. *and therefore the ſaid ſections are omitted in the ſaid acts here following.* 6 *Ann.* Cap. 22. S. 9.

Recites that by an act 5 *Will.* and *Mar.* Cap. 20. the bank of *England* was erected, 1,200,000*l.* was lent to their majeſties, for which there is payable to the governor and company, the yearly ſum of 100,000*l.* out of the duties of exciſe, redeemable by parliament; reciting another act made 8 and 9 *Will.* III. Cap. 20. *for making good the deficiencies of ſeveral funds and for enlarging the capital ſtock of the bank.* 7 *Ann.* Cap. 7. S. 1.

And another act made 5 *Ann.* Cap. 13. *for continuing duties on houſes, to ſecure a yearly fund for circulating Exchequer bills, now expired*, reciting alſo, that the governor and company did lately admit new ſubſcriptions for doubling their ſtock of 2,201,171*l.* 10*s.* at the rate of 115*l.* to be paid for every 100*l.* ſubſcribed; and that ſubſcriptions have been made for that ſum; *It is enacted*, that 2,201,171*l.* 10*s.* be added to the ſtock of the bank, which before ſuch additions, conſiſted only of the like ſum; ſo that the whole capital ſtock now ſhall amount to 4,402,343*l.* and the new ſubſcribers ſhall be incorporated with the preſent members of the bank, and be taken to be one body politick and corporate, by the name of *The Governor and Company of the Bank of* England.

The ſaid capital ſtock ſhall be aſſignable in the ſame manner as the original capital ſtock. S. 2.

The bank is to pay into the Exchequer 400,000*l.* before the 25th of *Auguſt*, 1709. S. 3.

The bank of *England*, thus enlarged, ſhall for ever be a body corporate, and enjoy the yearly fund of 100,000*l.* out of the exciſe. S. 5.

The ſtock and funds of the bank, and the intereſt of every member therein, ſhall be exempted from taxes, and ſhall be deemed a perſonal eſtate, and ſhall go to executors and not to heirs, and ſhall not be liable to foreign attachment. S. 62.

The original fund of 100,000*l.* *per ann.* and all profits for the management of the corporation, ſhall be applied to the uſe of the members of the corporation ratably. S. 63.

It ſhall be lawful for the bank at any time to reduce their capital ſtock, increaſed as aforeſaid, by dividends; taking care that the total of their debts do not exceed the value of their capital: And in caſe the governor and company by any dividend, ſhall reduce their capital without proportionably reducing the total of the debts, ſo that the value of their capital ſhall not be ſufficient to anſwer their debts; in ſuch caſe, the particular members who ſhall receive ſuch dividend, ſhall be ſeverally liable, ſo far as the ſhares by them received will extend, to pay the debts which ſhall remain due to any perſons, who may ſue for the ſame, beſides treble coſts, by action of debt or upon the caſe, &c. S. 65.

It ſhall be lawful for the ſaid governor and company to call in any ſums of money, which they in a general court ſhall think neceſſary, to be paid by their members proportionably, which ſhall have before been divided, out of the ſaid capital of 4,402,343*l.* and in caſe any member ſhall neglect to pay his ſhare, at the times appointed, by notice in the *London Gazette*, and fixed upon the *Royal Exchange*, it ſhall be lawful for the governor and company to ſtop the dividends of ſuch members, and alſo to ſtop the transfers of their ſhares, and to charge the defaulters with intereſt at ſix *per cent.* and in caſe the principal and intereſt be not paid in three months, they ſhall have power to ſell the ſtock of ſuch defaulters, to pay the ſame. S. 72.

Every perſon who ſhall be elected governor, depury-governor, or director of the bank of *England*, ſhall, during that year, be incapable of being choſen director for the management of the affairs of *the United Company of Merchants of* England, *trading to the* Eaſt-Indies, and *vice verſa.* 9 *Ann.* Cap. 7. S. 11.

The bank ſhall continue a body corporate, and enjoy their yearly fund of 100,000*l.* ſubject to the following power of redemption: 12 *Ann.* Stat. 1. Cap. 11. S. 23.

Upon

Upon twelve months notice, after the 1ſt of *Auguſt*, 1742, upon re-payment by parliament to the bank of 1,600,000*l.* and all arrears of the ſaid 100,000*l. per ann.* and of all money owing to them upon tallies, Exchequer orders, or parliamentary funds, ſuch funds, for redemption whereof other proviſion is made, excepted, the ſaid yearly fund of 100,000*l.* ſhall ceaſe. 12 *Ann.* Stat. 1. Cap 11. S. 24.

After ſuch redemption the corporation ſhall ceaſe. S. 25.

It ſhall be lawful, as well for the bank as for any others, to lend money to the treaſurers of the navy, &c. upon *South-Sea* ſtock, purſuant to the ſtat. 10 *Ann.* Cap. 19. S. 185. 12 *Ann.* Stat. 2. Cap. 3. S. 10.

The governor and company of the bank of *England*, being willing to deliver up to be cancelled, as many Exchequer bills as amount to 200,000*l.* in principal money, and to accept an annuity of 100,000*l.* being five *per cent.* for the ſame, to commence from *Chriſtmas*, 1717, redeemable upon one year's notice. 3 *Geo.* I. Cap. 8. S. 1.

The bank ſhall, before *Chriſtmas* 1717, deliver up as many Exchequer bills as ſhall amount to 2,000,000*l.* in principal money, to be cancelled. S. 5.

After *Chriſtmas*, 1717, the bank ſhall for ever have one annuity, of 100,000*l.* being five *per cent.* computed on the ſaid ſum of 2,000,000*l.* which yearly ſum ſhall be paid out of the aggregate fund, and duties on houſes, and ſhall be paid to the bank for ever, at the four uſual feaſts. S. 6.

Upon one year's notice being given at *Chriſtmas*, 1717, or at any quarterly feaſt after, and upon re-payment to the bank of the 2,000,000*l.* and of all arrears of the ſaid yearly ſum of 100,000*l.* the ſaid yearly ſum ſhall ceaſe. S. 7.

For the better payment of the annuity of 100,000*l.* ſtanding orders ſhall be ſigned by the treaſury. S. 13.

As the ſeveral duties chargeable with the payment of the ſaid annuity ſhall be brought into the Exchequer, ſuch money ſhall be iſſued upon ſuch orders, weekly or otherwiſe, towards diſcharging the ſeveral annuities thereon charged, to grow due at the end of the quarter of a year, ſo as ſuch weekly payments exceed not the ſums of the ſeveral quarterly payments, which ſhall grow due at the end of each quarter. S. 14.

The ſaid annuity of 100,000*l.* ſhall be deemed perſonal eſtate; and the ſame and the ſtocks which the bank now have, and thoſe they ſhall be entitled unto by virtue of this act, and the ſums payable to them in reſpect of any ſuch ſtock, ſhall be free from all taxes, and not liable to foreign attachment. S. 16.

The ſaid duties on houſes, aggregate fund, and other duties, ſhall be continued to his majeſty, his heirs, and ſucceſſors for ever, and ſhall be raiſed, &c. by ſuch methods, &c. as are preſcribed by the reſpected acts now in force. S. 17.

The monies of the ſaid duties, &c. which ſhall be brought into the Exchequer for purpoſes in this act, except the charges for raiſing, &c. the ſame, are appropriated for diſcharging the growing payment on the ſaid annuity of 100,000*l.* which payments are to be ſatisfied without charge, but ſubject to redemption. And in caſe any officer of the Exchequer ſhall miſapply any of the monies, or ſhall not keep books, and do all other things by this act required, he ſhall forfeit his office, and be incapable to ſerve his majeſty in any employment of truſt or profit, and be liable to pay double the ſum miſapplied, with coſts to the party grieved; to be recovered in any of the courts at *Weſtminſter*. S. 18.

The annual ſum of 100,000*l.* ſhall be preferred in payment before the yearly ſum of 120,000*l.* to the civil liſt. S. 22.

After ſatisfying the payment aforeſaid, the deficiencies on the original fund of 100,000*l. per ann.* payable to the bank out of five-ſeventh parts of certain duties of exciſe, ſee 5 and 6 *Will.* and *Mar.* Cap. 20. S. 19. *before recited*, ſhall be ſatisfied out of the monies by this act appropriated; after which the yearly ſum of 4000*l.* ſhall be iſſued to the ſheriffs. S. 23.

The ſurplus of the duties, &c. hereby appropriated at the end of any quarter, ſhall attend the diſpoſition of parliament. S 24.

In caſe the produce of the ſaid duties, &c. ſhall be deficient, ſuch deficiency ſhall be made good out of the produce of the ſaid duties, &c. in any ſubſequent quarter. S 25.

If ſuch deficiency ſhall happen at the end of any year, reckoning each year to end at *Michaelmas*, ſuch deficiency ſhall be made good out of the next aids to be granted in parliament. 3 *Geo.* I. Cap. 8. S. 26.

It ſhall be lawful for the bank, from time to time, as they ſhall ſee cauſe, to call for from their members, in proportion to their reſpective intereſts in the capital ſtock, any ſums of money, as in a general court ſhall be judged neceſſary; and all executors, &c. ſhall be indemnified in paying the ſame; and if any member ſhall neglect to pay his ſhare of the money ſo called for, at the time appointed, by notice in the *London Gazette*, and fixed upon the *Royal Exchange*, it ſhall be lawful for the bank not only to ſtop the dividend of ſuch member, and to apply the ſame towards payment of the money ſo called for, but alſo to ſtop the transfers of the ſhare of every ſuch defaulter, and to charge him with an intereſt of five *per cent. per ann.* for the monies ſo by him omitted to be paid, till payment thereof; and if the principal and intereſt ſhall be three months unpaid, the bank ſhall have power to ſell ſo much of ſuch defaulter's ſtock as will ſatisfy the ſame, rendering the overplus to the proprietors; and the bank may, in a general court, when they ſhall adjudge their affairs will admit thereof, cauſe any ſum of money ſo called in, to be divided amongſt the then members, in proportion to their reſpective ſhares in the capital ſtock. S. 38.

The bank may borrow money on any contracts, &c. under their common ſeal, or upon credit of their capital ſtock, at ſuch intereſt as they ſhall think fit, though it exceed the intereſt allowed by law, and give ſuch ſecurity as ſhall be to the ſatisfaction of the lenders; and they may contract with any perſons, upon ſuch terms as they ſhall find neceſſary, for the better enabling them to perform ſuch things as they are to do in purſuance of this act, and take ſubſcriptions from ſuch perſons for that purpoſe; and ſuch contract, &c. ſhall not be chargeable with ſtamp duties. S. 39.

No member of the bank, for any thing in this act contained, ſhall be diſabled from being a parliament man, or adjudged liable to be a bankrupt. S. 43.

The bank may in a general court make ſuch addition to their capital ſtock, in regard of their undertaking to diſcharge Exchequer bills, as they ſhall think fit; and ſo much as ſhall be ſo declared, ſhall be deemed capital ſtock, and the members of the bank, who ſhall have a ſhare in ſuch ſtock, may transfer the ſame in method, &c. preſcribed by any ſtatute or charter now in force for aſſignments. S. 45.

The bank ſhall continue a corporation, and enjoy the ſaid ſeveral annuities, till all the ſaid annuities ſhall be redeemed, according to the proviſos in this act. S. 49.

For encouragement of ſuch perſons as are willing to advance monies for paying of the principal ſums amounting to 8,762,625*l.* upon the lottery acts of 9 and 10 *Ann.* for redeeming annuities on an act 12 and 13 *Will.* III. Cap. 12. to patentees, out of the weekly ſum of 3,700*l.* out of the exciſe, for which the perſons advancing the ſame, are to have annuities of five *per cent.* redeemable by parliament: *It is enacted*, that till the annuities of five *per cent.* ſhall be redeemed by the parliament, the bank ſhall employ two perſons within their office of *London*, one to be their chief caſhier, the other their accountant-general; and the monies coming into the Exchequer for the payment of ſuch annuities, ſhall be paid quarterly to the ſaid caſhier, by way of impreſt and on account, and the accountant-general ſhall inſpect the receipts and payments of the caſhier, and the vouchers relating thereto; and all the monies to be advanced for ſuch annuities ſhall be one capital or joint-ſtock, on which the ſaid annuities ſhall be attending; and all perſons in proportion to the monies they ſhall advance, ſhall have a ſhare in ſuch ſtock, and in the annuity attending the ſame; and ſuch ſhares ſhall be transferable and adviſeable as is preſcribed by the act 1 *Geo.* I. Cap. 19. and no ſtamp duties ſhall be chargeable on ſuch transfers: And the bank, notwithſtanding the redemption of any of their own funds or annuities, ſhall continue a corporation, relating to the receiving, &c. the annuities laſt mentioned, till the ſame be redeemed by parliament; and no fees ſhall be taken for paying the ſaid annuities, or for ſuch transfers. Nevertheleſs the treaſury may allow out of the monies to be impreſted as aforeſaid, ſalaries to the caſhier and accountant-general. S. 50.

Transfers

Transfers of bank ſtock ſhall not hereafter be made liable to any higher duties than are now payable for the ſame. 3 *Geo.* I. Cap. 8. S. 51.

The bank may, under their common ſeal, aſſign the ſaid annuities of 100,000*l.* or any part thereof, and alſo ſuch annuities of five *per cent. per ann* to any perſons whatſoever, and ſo *toties quoties*; which aſſignments ſhall not be ſubject to any tax, ſo as an entry be made of ſuch aſſignments in the office of the auditor of the receipt. S. 53.

Nothing in this act ſhall hinder the making good any deficiency in the yearly fund of 1,16,573*l.* 12*s.* mentioned in the act 1 *Geo.* I. Cap. 2. S. 54.

Any vote of the houſe of commons ſignified by their ſpeaker in writing, and delivered at the office of the bank, ſhall be deemed a ſufficient notice within this act. S. 55.

The governor and company of the bank of *England* having agreed, that from the feaſt day of *St. John Baptiſt*, 1727, their annuity of 100,000*l.* upon the ſum of 2,000,000*l.* *See* 3 *Geo.* I. Cap. 8. S. 6. *before recited*, ſhall be reduced to four *per cent.* It is enacted that after the nativity of *St. John Baptiſt*, 1727, the ſaid annuity ſhall ceaſe, and the governor and company of the bank, ſubject to the proviſo of redemption in this act contained, ſhall have in lieu thereof, one annuity of 80,000*l.* which ſhall be payable out of the duties on houſes, and the aggregate fund; and ſhall be paid to the ſaid governor and company, and their ſucceſſors for ever, from *Midſummer*, 1727, at the four uſual feaſts, in ſuch manner and on ſuch conditions, as in the former act 3 *Geo.* I. Cap. 8. in relation to the ſaid annuity of 100,000*l.* 21 *Geo.* I. Cap. 9. S. 1.

On re-payment by parliament to the bank of *England*, of the principal ſum of 2,000,000*l.* and of all arrears of the ſaid annuity, the annuity ſhall ceaſe. S. 2.

If at any time payment be made of any ſum, not leſs than 500,000*l.* in part for the principal ſum, and of all arrearages; then ſo much of the ſaid annuity as ſhall bear proportion to the monies ſo paid in part of the principal ſhall ceaſe. S. 3.

The annuity ſhall be deemed perſonal eſtate; and the ſame and the ſtock which the ſaid company now have, or may be entitled unto, by virtue of this act; and all the principal ſums and annuities payable to the company in reſpect of any ſuch ſtock, ſhall be free from taxes, and ſhall not be liable to foreign attachments. S. 4.

The former acts, and all the powers, &c. therein contained, ſuch alterations as are made by this act excepted, ſhall continue to be uſed, &c. and the governor and company of the bank of *England* ſhall continue a corporation, and ſhall enjoy theſe annuities till they ſhall be redeemed, &c. S. 5.

If any perſon ſhall alter, forge, or counterfeit any bank bill, or bank note, made for payment of money, by, or for the ſaid governor and company, or any bank note, or ſhall eraſe any ſuch bill or note, or any endorſement thereupon, or ſhall tender in payment, utter, &c. any ſuch altered, forged, or counterfeited bill or note, or any eraſed or altered bill or note, or the endorſement thereupon, &c. knowing ſuch bill or note, or endorſement, to be altered, forged, counterfeited, or eraſed, and with intention to defraud the ſaid governor and company, or any other perſon; every ſuch perſon ſhall be adjudged a felon. S. 6.

The governor and company of the bank of *England* having agreed to pay into the Exchequer 1,750,000*l.* for the purchaſe of an annuity of 70,000*l.* ſubject to redemption; *It is enacted*, that every year after the feaſt day of *St. John Baptiſt*, 1728, a yearly fund of 70,000*l.* being four *per cent.* for the ſum of 1,750,000*l.* ſhall be payable in manner herein expreſſed, for the ſatisfying the annuities to be purchaſed in purſuance of this act, till redemption thereof by parliament. 1 *Geo.* II. Stat. 2. Cap. 8. S. 1.

The ſaid yearly fund of 70,000*l.* ſhall be payable out of the monies, which after the ſaid feaſt of *St. John Baptiſt*, 1728, ſhall ariſe into the Exchequer for the duties on coals and culm, granted by 9 *Ann.* Cap. 22. continued by 5 *Geo.* I. Cap. 9. and made perpetual by 6 *Geo.* I. Cap. 4. S. 2.

The governor and company of the bank of *England* ſhall advance into the receipt of his majeſty's Exchequer, the ſum of 1,750,000*l.* by the 24th of *July*, 1728. S. 3.

On payment by the bank, of the ſaid ſum of 1,750,000*l.* in manner aforeſaid, the governor and company, and their ſucceſſors and aſſigns, ſhall be intituled to receive at

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the receipt of the Exchequer, out of the ſaid yearly fund, one annuity of 70,000*l.* to commence from the 24th of *June*, 1728, and to be paid by half-yearly payments, at *Chriſtmas* and *Midſummer*, till redemption thereof by parliament, and the ſaid annuity of 70,000*l.* ſhall be free from taxes. 1 *Geo* II. Stat. 2. Cap. 8. S. 5.

An order ſhall be ſigned by the treaſury for payment of the ſaid annuity, and the ſame ſhall not be determined by the death or removal of any of the commiſſioners of the treaſury, &c. S. 6.

As the money of the ſaid duties ſhall be brought into the Exchequer, the ſame ſhall be iſſued upon the ſaid orders towards diſcharging the ſaid annuity, to grow due at the end of the half year in which ſuch payment ſhall be made; ſo as ſuch payment do not exceed the half-yearly payment which ſhall grow due. S. 7.

The ſaid annuity ſhall be a perſonal, and not a real eſtate, and ſhall not be liable to foreign attachment. S. 8.

If after the 24th of *June*, 1728, the produce of the ſaid impoſition on coals and culm ſhall be ſo deficient, as that the monies ariſing therefrom ſhall not be ſufficient to diſcharge the half-year's annuity then due, then the deficiency of ſuch half year ſhall be ſupplied out of the overplus monies of the ſaid duties ariſing in any ſubſequent half year; and if at any time after the 25th of *December*, 1728, ſuch produce ſhall be ſo deficient, at the end of any one year, computing the ſame to begin at *Chriſtmas* yearly, as that the ſame ſhall not be ſufficient to diſcharge the whole year's annuity then due, every ſuch yearly deficiency ſhall be made good out of the firſt ſupplies which ſhall be granted in parliament; and if no ſuch ſupplies ſhall be granted within ſix months, then the ſame ſhall be made good out of any monies which ſhall be in the receipt of the Exchequer of *the ſinking fund*, except ſuch monies of that fund as are appropriated to particular uſes. S. 9.

Whatever monies ſhall be ſo iſſued out of the ſinking fund, ſhall be replaced out of the firſt ſupplies to be granted in parliament. S. 10.

If there ſhould be any ſurplus monies ariſing by the ſaid duties at the end of any year, computing the ſame to end at *Chriſtmas* yearly, after the ſaid annuity of 70,000*l.* and all arrears thereof are ſatisfied, &c. ſuch ſurplus ſhall be reſerved for the diſpoſition of parliament. S. 11.

Upon repayment by parliament to the bank of *England*, of the ſaid 1,750,000*l.* and of all arrears, the ſaid annuity ſhall ceaſe; and after ſuch redemption, the monies ariſing by the ſaid duties ſhall not be applied but as ſhall be directed by future acts of parliament. S. 12.

If at any time after the 25th of *December*, 1729, payment be made to the bank of any ſum not leſs than 500,000*l.* in part of the principal ſum, at which the annuity is redeemable, and alſo of all arrears of the ſaid annuity, then ſo much of the annuity, as ſhall bear proportion to the monies ſo paid in part, ſhall ceaſe. S. 13.

The bank ſhall continue a corporation till the redemption of the whole annuity of 70,000*l.* S. 14.

All former powers granted to the bank for aſſigning any annuities or capital ſtock, formerly purchaſed by them, and now belonging to them, ſhall be revived; and the governor and company are empowered to transfer the ſaid annuity of 700,000*l.* as they ſhall think proper; ſubject, nevertheleſs, to redemption by parliament, and without power to enlarge their capital ſtock out of the ſame. S. 15.

After reciting the act of 12th *Ann* Seſſ. 2 Cap. 9, *for laying additional duties on ſoap and paper, and on certain linens, ſilks, callicoes and ſtuffs, and upon ſtarch, and exported coals, and upon ſtamped vellum, parchment, and paper*, &c. and that the governor and company of the bank of *England* have agreed to pay into the Exchequer 1,250,000*l.* for the purchaſe of an annuity of 50,000*l.* ſubject to redemption by parliament, to be charged on the ſurplus monies to ariſe from the ſaid additional duties; *it is enacted*, that yearly, from the feaſt of *St. John Baptiſt*, 1729, a yearly fund of 50,000*l.* being after the rate of four *per cent.* for the ſum of 1,250,000*l.* be ſettled for ſatisfying the annuities to be purchaſed in purſuance of this act, till redemption thereof by parliament. 2 *Geo.* II. Cap. 3. S. 1.

The ſaid yearly ſum of 50,000*l.* ſhall be payable out of the overplus monies of the ſaid additional duties, which ſhall remain after ſatisfying, &c. ſo much as ſhall be due to the *South Sea* company, on their annuity and additional allowance for charges of management,

management, granted by the act 6 *Geo.* I. Cap. 4. and the treaſury ſhall quarterly, in every year, after the feaſt of *St. John Baptiſt*, 1729, at the four uſual feaſts, or within ſix days after, cauſe the overplus monies of the ſaid additional duties to be computed, and applied towards making good the ſaid yearly ſum of 50,000*l.* without diverting any of the monies which by the ſaid act 6 *Geo.* I. Cap. 4. ought to be reſerved for ſatisfying the ſaid annuity to the *South-Sea* company. 2 *Geo.* II. Cap. 3. S. 2.

The governor and company of the bank of *England* ſhall pay into the Exchequer 1,250,000*l.* before the 6th of *October*, 1729. S. 3.

On payment of the ſaid 1,250,000*l.* the company ſhall be intitled to one annuity of 50,000*l.* from the 24th of *June*, 1729, to be payed by quarterly payments till redemption thereof by parliament; and the ſaid annuity of 50,000*l.* ſhall be free from taxes. S. 5.

Orders ſhall be ſigned by the treaſury for payment of the ſaid annuity, &c. as *per* 1 *Geo.* II. Stat. 2. Cap 8. S. 6. S. 6.

The ſaid annuity ſhall be a perſonal eſtate, and ſhall not be liable to foreign attachment.

If the overplus monies of the ſaid additional duties ſhall be deficient, &c. the deficiency ſhall be ſupplied, *as in the preceding act of* 1 Geo. II. Stat. 2. Cap. 8. S. 9, 10, and 11. S 8.

Upon repayment by parliament to the bank of *England*, of the ſaid ſum of 1,250,000*l.* and of all arrears of the ſaid annuity of 50,000*l.* the ſaid annuity ſhall ceaſe, and the monies ariſing by the ſurpluſſes of the ſaid additional duty ſhall not be iſſued, or applied to any other uſe, but as ſhall be directed by future acts of parliament. S. 11.

If payment be made to the bank of any ſums, not being leſs than 500,000*l.* at a time, in part of the ſaid principal ſum, and if payment be then alſo made of all arrears of the ſaid annuity, then ſo much thereof as ſhall bear proportion to the monies ſo paid in part of the ſaid principal ſum, ſhall ceaſe. S. 12.

The bank ſhall continue a corporation till redemption of the ſaid annuity of 50,000*l.* S. 13.

The bank may aſſign the ſaid annuity of 50,000*l.* or any part thereof, but ſubject to ſuch redemption by parliament. S. 14.

Out of the ſinking fund there ſhall be paid to the bank, 500,000*l.* for redeeming a proportionable part of the annuity of 80,000*l.* granted to them by Stat. 11 *Geo.* I. Cap. 9. S. 16.

At the feaſt of *St. Michael*, 1738, there ſhall be iſſued to the governor and company of the bank of *England*, the ſum of 1,000,000*l.* out of any of the aids granted in this ſeſſion of parliament, for redeeming the annuity of 40,000*l.* part of the annuity of 60,000*l.* in further part of the principal ſum of 2,000,000*l.* being the amount of Exchequer bills, delivered up by the bank according to the directions of the act, 3 *Geo.* I. Cap. 8. and in reſpect whereof, an annuity of 80,000*l.* was payable to the bank by act 11 *Geo.* I. Cap. 9. and of which an annuity of 20,000*l.* was redeemed by payment of 500,000*l.* purſuant to the act 2 *Geo.* II. Cap. 3. 11 *Geo.* II. C. 27. S. 16.

Reciting the ſeveral acts of 7 and 12 *Ann.* made concerning the bank, which continued the governor and company an incorporation till 1742, ſubject, however, to powers of redemption, as therein mentioned. 15 *Geo.* II. Pages 527, 528, 529, 530, 531.

And the time of the ſaid two former acts being expired, the company, by this act, are engaged to ſupply the government with the further ſum of 1,600,000*l.* before *December* 25, 1742, at different payments, as demanded by the treaſury, each payment not to be more than 400,000*l.* and at a month's notice.

The ſaid ſums to bear an intereſt of three *per cent.* till *Auguſt* 1, 1743, and on any default, the ſaid company may be ſued in any of his majeſty's courts at *Weſtminſter*, and ſhall forfeit twelve *per cent.* damages, and full coſts, for which their ſtock and funds ſhall be liable. P. 532.

The ſeveral proviſoes contained in the recited acts of 7 and 12 *Ann* and all proviſoes in any other act for determining the ſaid fund of 100,000*l.* *per ann.* are hereby repealed; and the ſaid company, and their ſucceſſors, ſhall continue to enjoy the ſaid entire yearly fund, to be paid out of the duties of exciſe, with perpetual ſucceſſion, and privilege of excluſive banking, and all other abilities, &c. granted to them, by any acts

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of parliaments, grants, or charters; ſubject nevertheleſs to ſuch reſtrictions, and other agreements, as are preſcribed by any acts and charters now in force; as alſo to the power of redemption, as in this act is hereafter contained. 15 *Geo.* I. P. 533.

At any time, twelve months after *Auguſt* 1, 1764, on repayment of all monies lent by the bank, with intereſt, &c. the ſaid yearly fund of 100,000*l.* ſhall determine. P. 534.

No other bank ſhall be allowed by parliament; nor ſhall any body politick or corporate, or other perſons whatever, united in partnerſhip, above the number of ſix, throughout *England*, borrow or take up any ſums of money on their note, payable for leſs time than ſix months, during the continuance of ſuch privilege to the governor and company, who are hereby declared to be a corporation, with privilege of exclusive banking, ſubject to redemption on a year's notice, after *Auguſt* 1, 1764, and repayment of the ſeveral ſums lent, with intereſt, *viz.* 3,200,000*l.* and all arrears of the 100,000*l.* *per ann.* and all principal and intereſt owing them on all tallies, Exchequer orders, Exchequer bills, or parliamentary funds, except ſuch funds as are otherwiſe provided for, which the governor and company, or their ſucceſſors, ſhall have remaining in their hands, or be entitled to, at the time of ſuch notice given, as aforeſaid. P. 535.

The governor and company may enlarge their capital with any further ſum not exceeding 1,600,000*l.* additional ſtock, and may take in ſubſcriptions from ſuch perſons, and at ſuch times, as they ſhall think proper; and all ſuch ſubſcribers, whether natives or foreigners, having paid the money ſubſcribed for, ſhall be united to, and incorporated with, the ſaid governor and company, and adjudged to be one body politick and corporate, by the name of *the governor and company of the bank of* England; ſubject to the ſame regulations, and intitled to the ſame privileges and advantages with the preſent members of the ſaid corporation. P. 536.

The capital ſtock, increaſed as aforeſaid, ſhall be aſſignable and transferrable in the ſame manner as the original capital ſtock was, before the making this act; and, together with the produce, ſhall be free from all manner of taxes, charges, or impoſitions whatever; and the transfers of the additional ſtock ſhall not be chargeable with any other ſtamps or duties than were uſed in transferring the former ſtock.

No perſon concerned in the ſtock of this company, whether as governor, deputy-governor, director, manager, or member, ſhall be diſabled from ſerving as a member of parliament, or be liable to any penalty, or diſability, preſcribed by any acts of parliament, for not qualifying themſelves to execute any truſt with reſpect to affairs of this corporation, as perſons, who execute any office or place of profit or truſt, are liable to, by any law now in force, or liable to be a bankrupt within the meaning of any ſtatutes of bankruptcy.

It is the true intent and meaning of this act, that the governor and company, and their ſucceſſors, ſhall enjoy the ſaid annuity of 100,000*l.* in reſpect of their original capital ſtock of 1,600,000*l.* till *Auguſt* 1, 1743, beſides the intereſt of the 1,600,000*l.* to be advanced as aforeſaid, which intereſt the ſaid governor and company are to receive back by way of diſcount. P. 537.

Any vote or reſolution of the houſe of commons, ſignified by the ſpeaker in writing, and delivered at the publick office of the ſaid governor and company, and their ſucceſſors, ſhall be deemed a ſufficient notice within the meaning of this act.

Any perſons who ſhall forge, counterfeit, or alter, any bank note, bill of exchange, dividend warrant, or any bond or obligation under the common ſeal, or any endorſement thereon; or ſhall offer to diſpoſe of the ſame, or demand any money, pretended to be due thereon, of the ſaid company, or any of their officers or ſervants, knowing ſuch note, &c. to be forged, &c. with an intent to defraud the ſaid company, or their ſucceſſors, or any other perſons whatever; the offenders being duly convicted, ſhall be deemed guilty of felony, and ſuffer death as felons, without benefit of clergy.

If any officer, or ſervant of the company, being intruſted with any note, &c. belonging to the company, ſhall embezzle any ſuch note, &c. the offender, being duly convicted, ſhall be deemed guilty of felony, and ſhall ſuffer death without benefit of clergy. P. 539.

By the charter it is ordained, that there ſhall be for ever, of the members of the company, a governor, deputy-governor, and twenty-four directors; which ſaid governor, deputy

deputy-governor, and directors, or any thirteen, or more, the governor or deputy-governor to be always one, shall be a court of directors, for managing the affairs of the corporation; but as this limitation, by the unavoidable absence, or otherwise, of the governor and deputy-governor, may be of great hindrance to the business of the corporation, *it is therefore enacted*, that whenever a court of directors is met, if the governor and deputy shall be absent for the space of two hours, after the usual time of proceeding to business, the directors then met, being not less than thirteen, may chuse a chairman by majority, and proceed to business; and all acts done by them shall be as valid, as if the governor or deputy had been present.

This act shall be deemed a publick act, and judicially taken notice of as such by all judges, &c. without specially pleading the same.

The preamble recites an act passed in 16 *Geo.* II. intitled, *an act for repealing the several rates and duties upon victuallers*, &c. *and for transferring the Exchequer bills unsatisfied thereupon, to the duties for licences to sell spirituous liquors, and strong waters by retail*, &c. whereby it was enacted, that from the twenty-fourth of *June*, 1743, the several duties imposed by an act of 12 *Geo.* I. upon all victuallers, and retailers of beer, within the cities of *London* and *Westminster*, and the weekly bills of mortality, should thenceforth cease; and that, after the said twenty-fourth of *June*, 1743, the principal sum of 481,400*l.* in Exchequer bills (part of the sum of 500,000*l.* advanced to his majesty's Exchequer by the bank of *England*, upon credit of the said duties, at three *per cent. per annum* interest) made forth in pursuance of the said act of 12 *Geo.* I. which then remained unsatisfied, with the interest thereon, and the charges of circulating the same, should be transferred from the duties then charged therewtih, and be charged (together with the sum of 5,18,600*l.* to be raised by the before recited act of 16 *Geo.* II. towards the supply for 1743) upon the duties payable to his majesty by another act of the said 16 *Geo.* II. intitled, *an act for repealing certain duties upon spirituous liquors*, &c. and in pursuance of the first recited act of *Geo.* II the said sum of 4,81,400*l.* in Exchequer bills, as also the said further sum of 5,18,600*l.* were charged upon the said duties, arising by licences, at an interest of three *per cent. per ann.* And whereas the bank is willing that the said sum of 986,800*l.* in Exchequer bills, remaining unsatisfied, on the aforesaid duties, may be cancelled and discharged, and in lieu thereof to accept of an annuity of 39,472*l.* being the interest on the said sum at four *per cent.* to be charged on the same securities; and also are willing to advance unto his majesty's Exchequer, towards the supply granted for the service of the year 1746, the sum of 1,000,000*l.* upon the credit of the duties arising by the malt and land tax for 1746, at four *per cent. per ann* for Exchequer bills to be issued for that purpose; provided they may have a power to create and dispose of the said sum of 986,800*l.* of bank stock (to be joined and incorporated with their present capital) in such manner, and at such times, as they shall think proper; with such further powers, privileges, and advantages, as have usually been granted by former acts on that occasion. The parliament, thinking it will be of advantage to the public to accept the said proposal of the bank, *have enacted*, that the bank of *England*, by the 25th of *March*, 1746, shall deliver up unto persons nominated by the treasury, all the said Exchequer bills charged upon the duties aforesaid, amounting to 986,800*l.* to be discharged and cancelled as the treasury shall think fit, without issuing again the same or any of them. 19 *Geo.* II. P. 155, 156, 157, 158.

All the interest due on the said Exchequer bills to be delivered up to be cancelled, with the charges of circulating the same, shall be paid off.

In lieu of the said sum of 986 800*l.* in Exchequer bills to be delivered up to be cancelled, the bank, from the 25th of *March*, 1746, shall receive from the Exchequer an annuity of 39,472*l.* being four *per cent.* interest on the said sum of 986,800*l.* until redemption thereof by parliament. P. 159.

The said annuity shall be paid from time to time, with preference to all other payments whatsoever, out of the monies that shall arise into the Exchequer, from the duties for licences to sell spirituous liquors and strong waters by retail, in pursuance of the act of 16 *Geo.* II.

The said annuity shall be paid at four quarterly payments, *viz.* on the feasts of *St. John Baptist*, *St. Michael*, *Christmas-Day*, and *Lady-Day*; the first payment to be made on *St. John's Day*, 1746; subject nevertheless to redemption, as provided for by this act; and the said annuity of 39,472*l.* shall be free from all taxes and charges.

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For the better and more regular payment of the ſaid annuity, orders ſhall be ſigned by the treaſury for the payment thereof, which ſhall be valid in law; and ſhall not be determinable by the death or removal of any of the commiſſioners of the treaſury, or determination of their power and offices, nor ſhall the treaſury revoke or countermand any orders ſo ſigned. 19 *Geo* II. P. 160.

And for the more ſpeedy payment of the ſaid annuity, *it is enacted*, that weekly, or otherwiſe, as the monies ariſing by the ſaid duties ſhall be paid into the Exchequer, the ſame ſhall be iſſued upon the orders for diſcharging the quarterly annuity, ſo as ſuch weekly payments do not exceed the ſum which ſhall be due at the end of every quarter.

The ſaid annuity ſhall be adjudged to be a perſonal, and not a real eſtate, and ſhall not be liable to any foreign attachment.

If at any time after the 25th of *March*, 1746, the produce of the duties ariſing by licences aforeſaid, at the end of any quarter ſhall be inſufficient to pay the quarter's annuity, in every ſuch caſe, the deficiency ſhall be ſupplied out of the overplus monies of the ſaid duties, which ſhall be in any ſubſequent quarter; and if at the end of any one year, computing the ſame to end at *Lady-Day* yearly, the produce ſhall not be ſufficient to pay off the whole year's annuity then due, the deficiency ſhall be made good out of the firſt ſupplies; and if no ſupplies be granted within ſix months after, then to be paid out of the *ſinking fund*, ſuch monies therein excepted, as by former acts are appropriated to other uſes. P. 161.

Whatever money ſhall be iſſued out of the *ſinking fund*, ſhall be replaced out of the firſt ſupplies granted by parliament.

Upon repayment by parliament to the bank of the ſaid principal ſum of 986,800*l.* in full without deduction, &c. and of all arrears of the ſaid yearly ſum of 39,472*l.* then, and not till then, the ſaid annuity ſhall ceaſe, and be accounted redeemed; and after ſuch redemption, the monies, ariſing from the ſaid duties for licences, ſhall be applied as any future act ſhall direct. P. 162.

If, at any time after the 25th of *March*, 1746, payment be made to the bank of any ſums not leſs than one moiety of the ſaid 986,800*l.* at any one time, and alſo of all the arrears of the annuity, then ſo much of the annuity, as ſhall bear proportion to the monies paid in part of the whole principal ſum, ſhall ceaſe, and be underſtood to be redeemed.

The company of the bank may admit, and take in by ſale, call, or ſubſcription, or by ſuch other methods as they ſhall judge proper from ſuch perſons, upon ſuch terms, and at ſuch times as they ſhall approve, for enlarging their preſent capital to a ſum not exceeding the further ſum of 986,800*l.* additional ſtock, over and above what they are impowered to create, by any former act in that behalf, and from time to time, in a general court, and from ſuch times as they ſhall direct, to order the ſame, or any part thereof, to be added to the preſent capital of the bank; from which time ſuch monies ſhall be deemed as part of the ſaid capital ſtock, and ſhall be proportionably enlarged thereby; and all perſons on whoſe account any monies ſhall be paid in, as directed towards the ſaid ſum, they, their executors, adminiſtrators, and aſſigns, ſhall be deemed members of, and incorporated with, the company; and ſhall with the other members of the corporation, be taken to be one body politic and corporate, by the name of *the governor and company of the bank of* England, ſubject to the ſame rules, and enjoying the ſame privileges, with the preſent members of the corporation; and all executors, adminiſtrators, guardians, and truſtees, ſhall be indemnified in making payments upon ſuch calls, &c. as aforeſaid. P 163.

The capital of the bank ſo increaſed ſhall be transferrable in the ſame manner as the original ſtock was before this act, and, together with the produce thereof, ſhall be free from all taxes, &c. whatſoever; and the transfers and aſſignments of ſtock in the company's books ſhall be liable to no higher ſtamp, or other duties, than are now payable for the ſame. P. 164.

The company of the bank, and their ſucceſſors, ſhall continue a corporation, and enjoy all the privileges, &c. belonging thereto, until the complete redemption of the ſaid annuity of 39,472*l.* in as full manner as the ſame are ſpecified in an act of 15 *Geo.* II. intitled, *an act for eſtabliſhing an agreement with the governor and company of the bank of* England, *for advancing the ſum of one million ſix hundred thouſand pounds*, &c. or in any other act relating to the ſaid corporation.

The

The bank ſhall advance to the Exchequer, towards the ſupply for the ſervice of the year 1746, 1,000,000*l* upon the credit of the duties ariſing from the land-tax and malt act, for the ſaid year, to be paid at ſuch times, and in ſuch proportions, as the treaſury ſhall direct; ſo that they be obliged to pay no more than 250,000*l*. at any time, nor without fourteen days notice before each payment. 19 *Geo.* II. P. 165.

Upon payment of the ſaid million, or any part thereof, by the bank, the treaſury ſhall make out Exchequer bills for the ſame, payable out of the duties granted by the ſaid two acts, together with an intereſt of four *per cent per ann.* until repayment of the principal aforeſaid; and the ſaid bills ſhall be ſubject to the rules preſcribed in the laſt recited acts which relate to Exchequer bills thereby authorized to be made forth.

In caſe the bank ſhall make failure in any of the ſaid payments, appointed by this act to be made into the Exchequer, at or before the times limited in that behalf, the ſame ſhall be recovered to his majeſty's uſe by action of debt, or on the caſe, &c. in any of the courts of *Weſtminſter*, &c. in which ſuit, &c. the governor and company of the bank of *England* may be declared indebted to his majeſty, the monies of which they ſhall have made default in payment, &c. which ſhall be ſufficient; and upon ſuch action, &c. there ſhall be further recovered, damages after the rate of ten *per cent.* for the monies ſo unpaid, beſides full coſts of ſuit. P. 166.

The bank is to continue a corporation until the ſeveral annuities eſtabliſhed by parliament are redeemed. 4 *Geo* II. C 9 S 33.—15 *Geo.* II C 19. S. 13. 16 *Geo.* II. C 13. S 32.—17 *Geo.* II C. 18. S. 28.—18 *Geo* II. C. 9. S. 33. 19 *Geo.* II. C. 6. S. 15 and C 12 S. 59.—20 *Geo.* II. C. 3. S. 55. and C. 10. S. 45.—21 *Geo.* II. C. 2. S. 36.—22 *Geo.* II. C 23 S. 14.—23 *Geo.* II C. 16 S. 11.—28 *Geo.* II. C. 15. S. 31.—29 *Geo* II C. 7. S. 39.—30 *Geo* II. C 19 S. 51.—31 *Geo* II C. 22.—32 *Geo.* II. C. 10.—33 *Geo.* II. C. 7.—1 *Geo.* III C 7.—2 *Geo* III. C. 10.—3 *Geo.* III C. 12. And by ſeveral ſubſequent acts for new loans to the preſent time. It being one of the clauſes of every bill for raiſing money by annuities payable at the bank.

In the firſt ſeſſion of the fifteenth parliament of *Great Britain*, and in the month of *June*, 1781, the laſt act of parliament was paſſed for renewing the charter of the bank, upon condition that the company ſhould lend to government 2,000,000*l*. at 3 *per cent.* for three years, to enable adminiſtration to pay off the like ſum of the navy debt. Having now finiſhed what relates to the ſtock, I ſhall deſcribe the nature of the mercantile money tranſactions at the bank.

And, firſt, whoever has a mind to keep caſh with the bank, muſt give a ſpecimen of his firm, in a book kept for this purpoſe, and apply to the firſt clerk of theſe accounts, commonly called the drawing accounts, who will give him a book, wherein his account is opened, which book he takes away with him, and for which it is cuſtomary to give half a crown; the perſon will likewiſe receive a parcel of checks, of whoſe numbers an account is taken by him that delivers them out, on which he is to draw on the bank, as he ſhall have occaſion.

In the books, which are of ſeveral ſizes, different columns are adapted for the entry of caſh, *paid* and *received*; and alſo for the entry of bills depoſited till due, when they become caſh to be paſſed forward, which is done the firſt time the book is carried to the bank, after they are received.

Whenever you have any caſh to pay in, you carry it to the bank, with your book, in which you have credit immediately given for it; and on the contrary when you want to pay, you draw the ſum on one of your checks, in the following manner.

To the Caſhiers of the Bank of *England*. *Auguſt* the 21ſt, 1790.

Pay to Mr. A. B. *or bearer, on demand, two hundred pounds, ten ſhillings, and two pence; for account of* C. D.

£. 200 : 10 : 2.

Which is immediately complied with, and your account debited in the bank books; and whenever you are deſirous of having your account examined, you carry your

book, and leave it for a day or two in the accountant's office; and on your taking it again, you will find every *draught* you have made, entered, and your checks returned you, cancelled: And no money will be paid, either to yourſelf or your order, without ſuch a draught, or what is called a *write off*, which are printed ſlips of paper, with blanks left for the ſums wanted, and are always laying, with pens and ink, at a deſk in the great hall, for every one to make uſe of at pleaſure, and when filled up are as follows:

Auguſt the 21ſt, 1790.

WRITE off from my bank book, one hundred and fifty-ſeven pounds, ten ſhillings, and ſixpence. S. T.

£. 157 : 10 : 6.

Which you give to any one of the clerks ſitting on the left hand going into the hall for that purpoſe, with your book, and he debits you the ſum therein deſired, and gives you money or notes for it, which you pleaſe; reſerving the write-off as a voucher.

If you have any accepted bills payable in *London*, and, to ſave yourſelf the trouble, have a mind that the bank ſhould receive them, you muſt endorſe, and carry them with your book to the bank, and have them entered by the proper clerks, who ſit at one end of the great hall; and after this depoſit, the value will be carefully received, or the bills duly proteſted; if the former, their import will be credited in your account; if the latter, the bills will be returned, and the charges of proteſting debited to you.

If you would have the bank pay any bills that are drawn on you, you may accept them payable at the bank; and in this caſe, you muſt, before they fall due, give the bank an order to pay them when preſented, adviſing their conſents, from whence, and by whom drawn, &c. or you may, at the time of acceptance, write an order on them to the caſhiers, as a draught, to pay them when due, though, beſides this, a ſeparate order muſt be left there for their diſcharge.

The bank will diſcount bills for any ſum, if the holders and acceptors are to the directors' ſatisfaction; the foreign ones after the rate of four, and inland at five *per cent. per ann.* and in order to get this tranſaction effected, you muſt deſcribe the bills on a ſlip of paper, with your's and the acceptor's names, and deliver it, with the bills, to a clerk who attends for this purpoſe in the ſame office where the checks are delivered, and he carries it to the committee, who either accept or reject the propoſal, without aſſigning any reaſon for their behaviour; if the former, the money is immediately paid you by the proper clerk, with a deduction of the diſcount.

The bank will receive by way of depoſit, from any perſon keeping caſh with them, bullion, foreign ſpecie, jewels, or any ſuch effects that are not bulky, and take care of them till called for; but they will give no receipt with them, nor otherwiſe oblige themſelves to be anſwerable for their ſafety; as they charge nothing for their clerk's attendance, either at their receipt or delivery, nor for the depoſit; but they are ſealed up, and ticketed with the name of their owners, &c. who may receive them in the ſame form they were delivered whenever they think proper.

No body is obliged to pay a perſonal attendance for any tranſaction with the bank, but may ſend another with their book for entries, &c. as moſt merchants do their clerks; and all poſſible diſpatch is given to every one in their turn.

The bank, beſides diſcounting bills, will advance money on government ſecurities, or on a depoſit of foreign ſpecie, or bullion, but never on jewels or eſtates; and they will likewiſe buy gold and ſilver bullion, after aſſaying *Spaniſh* dollars, &c. though ſeldom at ſo high a price as private purchaſers, theſe latter often buying for their own uſe, but the bank by way of merchandiſe, on which a profit is expected.

The buſineſs of this corporation was for many years carried on at *Grocers-Hall* in the *Poultry*, though the firſt ſubſcription was taken at the *Mercers* in *Cheapſide*, whilſt the other was getting ready, till they erected the ſpacious pile they at preſent occupy, in *Threadneedle*-

Threadneedle-ſtreet, where offices are appropriated for every branch of their employment; their caſh, notes, and every thing of value, are preſerved in the ſubterraneous vaults, to guard them from fire, and the whole building ſecured by very ſtrong ſubſtantial faſtenings; and ſince the dreadful riot in the month of *June* 1780, when an attempt was actually made to break in and rob the bank, a military guard has been appointed to do duty day and night, as regularly as in a garriſon; the church adjoining to the bank, called *St. Chriſtopher le Stocks*, having been purchaſed under a ſpecial act of parliament, and pulled down for the purpoſe of enlarging the building, and erecting a guard-houſe and barracks for the military nightly guard; which works have been completed in a ſuperb manner; and in the beſt ſtyle of modern architecture.

Here it may be proper to obſerve, that the publick creditors of the nation, whoſe accounts are kept in books at the bank, need not be under any future apprehenſion of loſs or confuſion ariſing in their reſpective accounts from accidents happening to them at the bank. For, as the directors of the bank only undertake the management of the publick funds, that is to ſay, the transfers, paying of intereſts, &c. for government, at their office, for the conveniency of the publick; duplicates of all the books are depoſited in his majeſty's Exchequer at *Weſtminſter*.

The corporation is under the management of a governor, deputy-governor, and twenty-four directors; of which latter, three attend from ten o'clock till twelve, Sundays and holidays excepted, for fourteen days together, and are then ſucceeded by the like number for the ſame term, till the whole have taken their rotation; and *Thurſday* being their court day, the governor, deputy, and all the directors meet, except ſuch as are out of town, or are hindered by ſickneſs, as they are very punctual and exact in their attendance on the buſineſs of the corporation; for which the governor has 200*l.* the deputy 200*l.* and each of the directors 150*l. per ann.* They are choſen yearly by a general court, out of the principal proprietors of bank ſtock, and are always gentlemen of large fortunes, but more reſpected and eſteemed for their ſtrict adherence to integrity and honour.

The qualification of the governor is 4000*l.* of the deputy-governor 3000*l.* and for the directors 2000*l.* bank ſtock, and that a perſon may be privileged to vote at their election, he muſt poſſeſs 500*l.* of the ſaid ſtock.

As for the clerks, the regularity of their attendance is ſecured by excellent rules; amongſt others, they are obliged to enter their appearance, at nine o'clock every morning, in a book kept in the great hall for that purpoſe, which book is carried into the parlour to the ſitting directors every day, and if any are found miſſing, enquiry is made if they are abſent the whole day, or any part of it, and if proper reaſons are not aſſigned for the failure of an hour's attendance, the fine is impoſed. Sufficient ſecurity to the amount of 1000*l.* is likewiſe taken for their fidelity; and in juſtice to thoſe gentlemen, it ought to be recorded, that their celerity and exactneſs in the diſpatch of buſineſs, cannot be equalled by any ſet of men of the ſame denomination in any of the other publick banks in *Europe*.

From the preceding account of the bank's eſtabliſhment and direction, it will readily be ſeen how much eaſier affairs are tranſacted here than in any one of thoſe eſtabliſhed in foreign countries; in ours, no fines are extorted, no perſonal attendance required, nor any delays occaſioned by ſhuttings-up, or non-attendance in the afternoon, as the bank of *England* is never ſhut but three days in a year, *Sundays* excepted, and tranſacts buſineſs from nine in the morning to three in the afternoon, when that of the day ends, as to the receipt and payment of money; though the clerks have ſtill about half, or three quarters of an hours employ to balance the tranſactions of the day, which after the aforeſaid hours, they immediately apply themſelves to perform. Here is no obligation laid on any one to pay in bank money, or to be ſatisfied with bank notes; but every one is at liberty to inſiſt on payment in the current coin of the kingdom: Yet, as the former are the readieſt payment, and a few minutes may convert them into caſh, they are commonly preferred, eſpecially for any large ſum; ſo that our bank, compared with the moſt celebrated and beſt of the foreign ones, muſt in every ſhape be preferred by the mercantile part of mankind, as well as by thoſe gentlemen whoſe large perſonal eſtates would make them at a loſs ſometimes for a place of ſecurity, if there were no bank ſubſiſting to ſerve them. And if the compariſon with the beſt abroad places our's in ſo advantageous a light, what ſhall we ſay, when we reflect on the ſhocking con-

conſequences of thoſe unſtaple and diſreputable banks, particularly the *Caiſſe d'Eſcompte* erected of late in *France*, where the fatal effects are felt to this very day? How ought every *Engliſhman* to thank providence for his lot, in being a native of a country ſecured by the moſt wholeſome laws, under the government of the beſt of kings, and where every individual enjoys his property unmoleſted!

Of Bankers.

THIS is an employment of great antiquity, for there was a ſpecies of it among the *Romans*, though very different in the exerciſe of it from what the practice is at preſent; in that famous empire, they were deemed publick officers, who as one may ſay, united the offices of exchangers, brokers, commiſſioners, and notaries, all in one; negociating exchanges, undertaking truſts, intervening in purchaſes and ſales, and dextrouſly managing all the neceſſary acts and writings of ſo many different functions.

The bankers of the preſent times differ very widely from the above deſcription, as thoſe in foreign parts do even now from the *Engliſh*. However, it muſt be acknowledged that the bank of *England* does not, in all reſpects, correſpond with the idea of a national bank; if it did we ſhould have no occaſion for the buſineſs of private banking, of which we are to treat in this chapter. The diſcretionary power lodged in the hands of the directors of the bank of *England*, admits a poſſibility of partiality in the great buſineſs of diſcounting, which may limit its utility, and cramp mercantile credit, and this ſhould never be the caſe in a commercial country. Upon ſome occaſions they have even ſuſpended diſcounting for a time, whereas a general national bank ought to lay no reſtraint whatever, if the bills offered are good; that is to ſay, drawn by a known reſponſible man on perſons of like reſponſibility, and endorſed by one or more of the ſame deſcription. The only argument that can be brought againſt making the bank of *England* a general national bank, to anſwer all the purpoſes of banking is, the multiplicity of buſineſs they are already engaged in for government, on account of the national debt, in addition to the common buſineſs in the circulation of caſh and notes. And certain it is, that by uſing proper precautions, the following claſs of men may be made nearly as uſeful as a national bank. In *France*, *Holland*, &c. they may more properly be termed remitters, as the principal part of their buſineſs conſiſts in negociating exchanges; Mr. *Savary* calls them merchants, traders, or dealers in money, who make contracts, and remittances thereof, and confine themſelves to ſuch tranſactions only: We have alſo ſome gentlemen of great fortune, who act on the ſame footing here in *England*; but when we ſpeak of an *Engliſh* banker, he is always to be underſtood as one acting in a different character and manner from thoſe laſt mentioned; as theſe limit their traffick to what may properly be called banking; their dealings being ſimilar to the bank's, and their advantages ariſing from the ſame negociations, only in a more limited degree; for their ſhops are the depoſitories or receptacles of their cuſtomer's money, which is paid in and drawn out by the proprietors, as in the bank, at their pleaſure; and the bankers will alſo diſcount bills, and advance money on ſuch ſecurities as the bank does, from which their buſineſs differs not materially, and though they have no public ſtock as the bank has, the profits ariſing from their negociations are their own.

Bankers are generally gentlemen of large eſtates and monied property, and though ſome have unhappily failed, it is an uncommon cataſtrophe, the buſineſs being certainly as lucrative as it is genteel.

The

The denomination was in *England* firſt given to ſome monied goldſmiths, in the reign of king *Charles* the ſecond, as will appear by the following paragraph in an act of parliament made the 22d and 23d of that prince's reign, *viz. Whereas ſeveral perſons being goldſmiths, and others, by taking up or borrowing great ſums of money, and lending out the ſame again for extraordinary hire and profit, have gained and acquired to themſelves the reputation and name of bankers*, &c. and their buſineſs, as has already been ſaid, is copied by the banks in all parts, though with very conſiderable additions and improvements.

By 6 *Anne*, C. 22. S 9. during the continuance of the bank of *England*, no company of private bankers are to exceed ſix in partnerſhip.

The buſineſs of private banking having increaſed conſiderably of late years, and the firms of bankers not only in *London*, but in every capital city and town in *Great-Britain*, amounting to four times the number that ſubſiſted when the laſt edition of this work was publiſhed, it is our indiſpenſable duty to enlarge a little on ſo intereſting a ſubject.

The principle upon which the publick credit of *Great-Britain* has been enlarged and ſupported, has been the free circulation of paper-money; whether conſiſting of credit given in books of account for annuities of various denominations in conſideration of ſums of money in ſpecie paid for them; or in Exchequer, navy, or other bills, bonds, &c. being government ſecurities. Alſo in maintaining and encouraging the acceptance of bank notes as equal in value to their amount in the current coin of the nation; thereby making ſuch paper-money, as much the medium of our exchanges with each other, and even with ſome foreign countries, as gold and ſilver.

Private perſons availing themſelves of the ſame principle, have been enabled to throw into the commercial circulation of the kingdom, their own notes, bills, and other paper ſecurities, and on this baſis a great number of banking houſes have of late years been eſtabliſhed; a certain quantity of ſpecie however, proportioned to the extent of their paper credit is requiſite for each houſe, that they may be ready to anſwer all demands for ſpecie, where it is required to be given in exchange for bills become due; for their own notes iſſued payable on demand; or for the draughts of their cuſtomers who have depoſited caſh in their hands. We therefore plainly perceive in the firſt inſtance, that bankers ought to be men of conſiderable property.

Now let us ſtate their great utility to merchants, ſhopkeepers, and many other claſſes of the people. In the firſt place, they will frequently diſcount bills for merchants and tradeſmen, their cuſtomers, which the bank from the ſmallneſs of the ſums, or from the ſecurity not being generally known or acknowledged, will reject. If the banker is ſatisfied that his cuſtomer for whom he diſcounts is a man of conſiderable property, it is a ſecondary object only with him, whether the bills are drawn upon or accepted by perſons equally reſponſible. And as the banker's profit conſiſts in making as much intereſt of the monies laying in his hands uncalled for, as poſſible, without loſs of time; diſcounting of courſe muſt conſtitute a great part of his buſineſs. And, if there were not a great number of bankers always ready to diſcount the bills that are circulated in trade, commercial credit would be ſtagnated, and the trading part of the nation would be thrown into a ſtate of anarchy.

In many trades, great part of the buſineſs is tranſacted by notes or bills drawn to become due at remote periods—three, ſix, nine, and twelve months after date. If the holder of theſe could not convert them into caſh, it would be impoſſible for him to go on, becauſe his workmen muſt be paid weekly in caſh. To exemplify this in one inſtance—A bookſeller employs a printer and pays him with his note of hand at three months after date; he is perfectly ſatisfied with this tranſaction; but, if he receives payments chiefly in this manner, he muſt have an immenſe fortune indeed to be able to pay all his workmen weekly in caſh. But by diſcounting, the matter is eaſily ſettled, and the intereſt he pays for the advance of the money muſt be computed and deducted from his profit, which however will always bear a proportion to this circumſtance.

But there is another ſuperſtructure of private credit, built upon the principle of publick credit.—What is become of the immenſe ſums raiſed by *three and four per cent. conſolidated bank annuities* and other government ſecurities?—expended long ſince in our wars; but while the annual intereſt of the nominal capitals is regularly paid, and that a price can be had at market for the principal itſelf, through the medium of *transfer-*

book;

books; publick credit ſupplies the place of non-payment of the principal in ſpecie. Thus a number of perſons in different parts of the kingdom, or even in different parts of ſo large a metropolis of *London*, agreeing to draw upon each at diſtant dates, and having a certain degree of commercial credit, may, by the means of diſcount raiſe aſtoniſhing ſums of money, to anſwer temporary purpoſes, and provided that from the profits of commerce, or even the ſale of merchandizes arriving from foreign countries within the given time, they can be anſwerable in ſpecie for each other's draughts, all will be well, and this ſyſtem of credit may be not only ſtrictly juſt, but neceſſary and expedient for the ſupport of commerce under certain circumſtances. For inſtance, a merchant may be in expectation of valuable cargoes from a diſtant country, and in time of war the delay of convoys, and other incidents, may impede their arrival till ſome months after the time he had rationally calculated. In the interval preſſing demands come upon him from the manufacturers of goods he has exported to the country from which he expects his return with profits in valuable imports. If a friend lends him his paper for three months, that is to ſay, allows him to draw upon him, and that friend is a man of eſtabliſhed credit, whoſe paper his banker will diſcount—here is a difficulty removed—perhaps the failure of a good man prevented.

So far, no miſchief has ariſen, but on the contrary a benefit has been conferred, to which no ſolid objection can be made. But unhappily this circulation of good paper, upon juſtifiable emergencies, has opened a door to an extenſive circulation of bad paper, upon the worſt principles; and as bankers of all other perſons are moſt liable to be impoſed on, and, if they are diſhoneſt, to impoſe upon others, an explanation of this ſpecies of ſpurious credit, properly belonged to this chapter.

But as accommodation bills to a conſiderable amount have lately occaſioned ſome remarkable law-ſuits, and embarraſſed the courts of juſtice to ſuch a degree, that their deciſions are likely to become the ſubjects of appeal to the ſupreme tribunal of the *Britiſh* empire, the houſe of lords, for whoſe final deliberation and determination a caſe is preparing by the judges; we ſhall enlarge upon this ſpecies of *bills of exchange*, under that head.

Taking it for granted that the bankers, being men of great experience, will take as much care of themſelves as poſſible, we ſhall only mention, for the information of the publick at large, that detections have been made of late years of perſons who have ſubſiſted entirely upon the circulation of paper money, by drawing upon each other, and converting part of the money ſo raiſed, by diſcounting or paſſing their bills with tradeſmen, to their own uſe; and when their credit has failed, which muſt inevitably be the caſe ſooner or later, they have abſconded. To leave no doubt upon the mind of any perſon whom this may hereafter concern, it is neceſſary to explain, that by increaſing the ſums drawn for, they have been enabled to live upon part of the ſpoils for one, two, or three years, and at the cloſe, when perhaps they have eſcaped to the continent, it is a general ſweep of the whole amount of the laſt bills they could get diſcounted.

With reſpect to the power of bankers to commit frauds of this nature, we ſhall ſtate it only as a power, which they certainly may, but we do not know that any of them have ever exerciſed, and which we hope they never will. A combination of a banker with one or more of his cuſtomers, or with ſome country bank, may enable him to raiſe money upon bills drawn upon him to a conſiderable amount. It ſhould, therefore, be a rule with all perſons, keeping large ſums in the hands of bankers, to enquire, *firſt* into the ſolidity of their capital. *Secondly*, how they employ the balances that remain with them—that is to ſay, the difference between their receipts and diſburſements—for it will readily be perceived that if the former did not exceed the latter conſiderably, they could not ſubſiſt. If theſe ballances are veſted in government or other good ſecurities, readily convertible into caſh, at a ſhort notice, to anſwer extraordinary calls, ſuch bankers may be confided in; but, if they are liable to be paid away to ſettle loſſes in ſtock-jobbing accounts, their cuſtomers are in great jeopardy.

The laſt conveniency I ſhall mention of private bankers, is, that tradeſmen ſleep in ſecurity, without the dread of fire or thieves, who lodge their money, above their petty caſh, in their hands, which ſome do every evening. The houſes and vaults of

bankers

bankers being ſecured in an extraordinary manner, and properly guarded, which cannot be the caſe generally, with the habitations of private citizens.

Bankers will lend money on plate, jewels, title deeds of houſes and lands, and other ſimilar ſecurities, ſuch as the receipts for ſubſcriptions to government loans, &c. when they are well acquainted with the owners.

Of Uſury.

IT is literally defined to be *money* given for the uſe of *money*, or the gain of any thing by contract, above the principal, or that which was lent exacted in conſideration of the loan, whether it be of money or any other thing. 3 Inſt. 151.

Some declare uſury to be an exaction of profit for a loan made to a perſon in want and diſtreſs; and Mr. *Malynes* in his *Lex Mercatoria* terms it a *biting*, from the etymology of the *Hebrew* word *Neſbech*, by Mr. *Humphreys* in his Annotations on *Neſbech*, which he ſuppoſes a general one for *uſury*; but after all, it properly conſiſts in extorting an unreaſonable rate for money, beyond what is allowable by law.

The letting money out at *intereſt*, or upon *uſury*, theſe being formerly regarded as ſynonimous terms, was againſt the common law; and in times paſt, if any one after his death was found to have been an uſurer, all his goods and chattels were forfeited to the king, &c. and according to ſeveral ancient ſtatutes, all *uſury* was unlawful; but now, neither the common nor ſtatute law abſolutely forbid it. 3 Inſt. 151, 152.

On the contrary, a reaſonable, that is a lawful intereſt may be taken for money. And how can it poſſibly be otherwiſe, when government itſelf pays ſeveral rates of intereſt, half-yearly, to publick bodies of men; and private individuals, for immenſe principal ſums borrowed at various times, from the publick at large, for the exigencies of the ſtate, in times of war. The Stat. 27 *Hen.* VIII. Cap. 9. allowed ten *per cent.* for money lent on mortgages, &c. which was revived by 13 *Eliz.* Cap. 8. and 21 *Jac.* I. Cap. 17. ordained eight *per cent.* The 12 *Car.* II. Cap. 13. lowered intereſt to ſix *per cent.* and 12 *Ann.* Cap. 16. to five *per cent.* at which it has remained fixed ever ſince.

It hath been adjudged on this laſt ſtatute, that a contract for ſix *per cent.* made before the ſtatute, is not within the meaning of it; and therefore that it was ſtill lawful to receive ſuch intereſt, in reſpect of ſuch a contract. And if a man, when intereſt was at ſix *per cent.* lent money at that rate, and after the ſtatute comes and ſinks the intereſt to five *per cent.* if he continues the old intereſt on that bond, the bond ſhall not be void as *uſurious*, but it is ſaid the party ſhall be liable to forfeit treble value. *Hawk.* 256. 1 *Mod.* 60.

The receipt of higher intereſt than the law allows, by virtue of an agreement ſubſequent to the firſt contract, doth not void an *aſſurance* fairly made; and a bond made to ſecure a juſt debt, payable with lawful intereſt, ſhall not be avoided by a corrupt *uſurious* agreement between others, to which the obligee was no ways privy; nor ſhall miſtakes in drawing writings make void any fair agreement. *Hawk* 246. 1 *Mod.* 60.

If the original contract be not *uſurious*, nothing done afterwards can make it ſo; and a counter-bond to ſave one harmleſs againſt a bond made upon a corrupt agreement, will not be void by the ſtatutes; but if the original agreement be corrupt between all the parties, and ſo within the ſtatutes, no colour will exempt

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it from the danger of the ſtatutes againſt *uſury*. 1 *Brownl.* 73. 2 *And.* 418. 4 *Shep.* Abr. 170.

A fine levied, or judgment ſuffered, as a ſecurity for money, in purſuance of an *uſurious* contract, may be avoided by an averment of the corrupt agreement, as well as any common ſpecialty, or parole contract. And it is not material whether the payment of the principal and the *uſurious* intereſt be ſecured by the ſame, or by different conveyances; for all writings whatſoever, for the ſtrengthening ſuch a contract, are void. Alſo a contract reſerving to the lender a greater advantage than allowed, is *uſurious*, if the whole is allowed by way of intereſt, or in part under that name, and in part only by way of rent for a houſe let at a rent plainly exceeding the known value; ſo where part is taken before the end of the time, that the borrower hath not the profit of the whole principal money, &c. 1 *Hawk.* P. C. 248. 3 *Nelſ.* Abr. 509.

By *Holt* C. J. If *A.* owes *B.* 100*l.* who demands his money, which *A* acquaints him he hath not ready, but is both willing and deſirous to pay it, if *B.* can procure the loan from any other perſon; and thereupon *B.* having preſent occaſion for his money, contracts with *C.* that if he will lend *A* 100*l.* he will give him 10*l.* on which *C.* lends the money, with which the debt is paid to *B.* this is a good and lawful contract, and not *uſurious*, between *B.* and *C.* *Carth.* Rep. 252.

It is not *uſury* if there be not a corrupt agreement for more than ſtatute intereſt; and the defendant ſhall not be puniſhed, unleſs he receive ſome part of the money, in affirmance of the uſurious agreement. 3 *Salk* 390.

There can be no *uſury* without a loan; and the court hath diſtinguiſhed between a bargain and a loan. 1 *Lutw.* 273. *Sid.* 27.

If a man lend another 100*l.* for two years, to pay for the loan 30*l.* but if he pays the principal at the year's end he ſhall pay nothing for intereſt; this is not *uſury*, becauſe the party may pay it at the year's end, and ſo diſcharge himſelf. *Cro. Jac.* 509. 5 *Rep.* 69.

And it is the ſame, where a perſon by ſpecial agreement, is to pay double the ſum borrowed, &c. by way of penalty for non-payment of the principal debt; the penalty being in lieu of damages, and the borrower might repay the principal at the time agreed, and avoid the penalty. 2 Inſt. 89. 2 *Rol.* Abr. 801.

A man ſurrenders a copyhold eſtate to another, upon condition that if he pays 80*l.* at a certain day, then the ſurrender ſhall be void; and after it is agreed between them, that the money ſhall not be paid, but that the *ſurrenderer* ſhall forfeit, &c. in conſideration whereof the *ſurrenderee* promiſes to pay to the *ſurrenderer*, on a certain day, 60*l.* or 6*l.* *per annum*, from the ſaid day, *pro uſu & intereſſe damnorum*, and not *lucri*, and but limited as a penalty for non-payment of the 60*l.* as a *nomine pœnæ*, &c. 2 *Roll. Rep.* 469. 1 *Danv.* Abr. 44.

On the loan of 100*l.* or other ſum of money for a year, the lender may agree to take his intereſt half-yearly or quarterly, or to receive the profits of a manor or lands, &c. and be no *uſury*, though ſuch profits be rendered every day. *Cro. Jac.* 26.

If a grant of rent, or leaſe for 20*l.* a year of land which is worth 100*l.* *per annum*, be made for 100*l.* it is not *uſurious*, if there be not an agreement that this grant or leaſe ſhall be void upon payment of the principal and arrears, &c. *Jenk. Cent.* 249.

But if two men ſpeak together, and one deſires the other to lend him 100*l.* and for the loan of it he will give more than legal intereſt; and to evade the ſtatute, he grants to him 30*l.* *per annum* out of his land, for ten years; or makes a leaſe for one hundred years to him, and the leſſee re grants it, upon condition that he ſhall pay 30*l.* yearly for the ten years; in this caſe it is *uſury*, though the lender never have his own 100*l.* again. 1 *Cro* 27. See 1 *Leon* 119.

A man granted a large rent for years, for a ſmall ſum of money; the ſtatute of *uſury* was pleaded; and it was adjudged, that if it had been laid to be upon a loan of money, it had been *uſurious*, though it is otherwiſe if it be a contract for an annuity. 4 *Shep.* Abr. 170.

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If one hath a rent-charge of 30*l.* a year, and another aſketh what he ſhall give for it, and they agree for 100*l.* this is a plain contract for the rent-charge and no *uſury*. 3 *Neſſ.* 510.

The grant of an annuity for lives, not only exceeding the rate allowed for intereſt, but alſo the proportion for contracts of this kind, in conſideration of a certain ſum of money, is not within the ſtatutes againſt *uſury*; and ſo, of a grant of an annuity on condition, &c. *Cro. Jac.* 253. 2 *Lev.* 7. See 1 *Sid.* 182.

Where intereſt exceeds 5*l. per cent. per annum* on a bond, if poſſibly the principal and intereſt are in hazard, upon a contingency or caſualty, or if there is a hazard that one may have leſs than his principal, as when a bond is to pay money upon a return of a ſhip from ſea, &c. theſe are not uſury. 2 *Cro.* 208. 508. 1 *Cro.* 27. *Show.* 8.

Though where *B.* lends to *D.* 300*l.* on bond, upon an adventure during the life of *E.* for ſuch a time; if therefore *D.* pays to *B.* 20*l.* in three months, and at the end of ſix months the principal ſum, with a further premium at the rate of 6*d. per* pound a month; or if before the time mentioned *E.* dies, then the bond to be void; this, differing from the hazard of a *bottomry* bond, was adjudged as an *uſurious* contract. *Carthew*, 67. 68. *Comberb.* 125.

One hundred pounds is lent to have 120*l.* at the year's end, upon a caſualty; if the caſualty goes to the intereſt only, and not the principal, it is *uſury*: The difference in the books is, that where the principal and intereſt are both in danger of being loſt, then the contract for extraordinary intereſt is not *uſurious*; but when the principal is well ſecured, it is otherwiſe. 3 *Salk.* 391.

A perſon ſecures the intereſt and principal: If it be at the will of the party who is to pay it, it is no *uſury*. 2 *Cro.* 509.

And a lender accepting a voluntary gratuity from the borrower, on payment of principal and intereſt, or receiving the intereſt before due, &c. without any corrupt agreement, ſhall not be within the ſtatutes againſt *uſury*. Yet, this is a ſhameful encouragement to monied ſharpers, who may receive, by way of douceur, a fourth part of the amount of the principal lent; from extravagant youth, under the preſſure of extreme want, and the immediate dread of a gaol. 2 *Cro.* 677. 3 *Cro.* 501.

And if one gives an *uſurious* bond, and tenders the whole money, yet if the party will take only legal intereſt, he ſhall not forfeit the treble value by ſtatute. 4 *Leon.* 43.

On an information upon the ſtatute of *uſury*, he who borrows the money may be a witneſs after he hath paid the money. *Raym.* 191.

In action for *uſury* the ſtatute againſt *uſury* muſt be pleaded, and a corrupt agreement ſet forth: It is not ſufficient to plead the ſtatute, and ſay that for the lending of 20*l.* the defendant took more than 5*l. per cent.* without ſetting forth a *corrupt* agreement or contract. *Lutw.* 466. 2 *Lill.* 672. 3 *Neſſ.* 514.

And in pleading an *uſurious* contract by way of bar to an action, the whole matter is to be ſet forth ſpecially, becauſe it lay within the party's own privity; but in an information on the ſtatute, for making ſuch a contract it is enough to mention the corrupt bargain generally, by reaſon matters of this kind are ſuppoſed to be privily tranſacted; and ſuch information may be brought by a ſtranger. 1 *Hawk.* 248.

In caſe of *uſury*, &c. an obligator is admitted to ayer againſt the condition of a bond, or againſt the bond itſelf for neceſſity's ſake. *Paſch.* 6 *W.* and *M.* B. R.

The word *corruptive* is neceſſary in a declaration for *uſury*, &c.

Uſury has been decried in all ages, both by *Jews* and *Chriſtians*; the former were by their laws prohibited to take it of their brethren, though *Moſes*, as Sir *Joſiah Child* ſuppoſes, for a political reaſon, permitted them to receive it from ſtrangers, as a ſure means of enriching the *Hebrews*: and though any ſhare of intereſt, or uſury was ill thought of by the fathers and others in the firſt ages of chriſtianity, it has for ſome time paſt been eſteemed rather an advantage than a detriment to a trading people, and conſequently been encouraged, though with proper limitations, by the legiſlature; a

lawful intereſt has therefore now loſt the name of uſury, which is only continued to thoſe illegal exactions that are the ruin of many, when extortioners find means to evade the wholeſome laws ſubſiſting between them, and prey upon the neceſſities of their poor neighbours: Theſe may juſtly be ſaid greedily to drink up the widows' and orphans' tears; and we have too many of ſuch miſcreants among us, who being loſt to all ſenſe, not only of religion, but even of humanity, improve the opportunity of the preſſing neceſſities of others, to their own advantage, and grow rich and opulent upon the ſpoils and deſtruction of their fellow creatures.

All the exertions of the Britiſh legiſlature have hitherto been ineffectual to ſuppreſs the practice of exorbitant uſurious contracts, for the loan of money to diſtreſſed individuals. Various ſtratagems are contrived by the money lenders, who advertiſe in the publick newſpapers, to take advantage of the prodigal and the unfortunate. The moſt common method, which we introduce here as a caution, is to ſtipulate for a premium, which they will oblige the borrower to pay back on the inſtant, together with a year's intereſt in advance, and then they take the ſecurity, whether bill, bonds, or aſſignments of land or houſes, for the ſpecifick ſum lent. Thus, if you apply to them for the loan of 100*l.* for a year, they will demand a *premium* or *conſideration*, and if the ſecurity is only perſonal, you will hardly obtain it under 20*l.* Having agreed to this exorbitant demand, and your bond or note for 100*l.* being prepared, that ſum is laid before you, and you are directed by the money-lender, or his agent, to return 20*l.* and 5*l.* for the year's intereſt, this being done, you deliver the ſecurity for 100*l.* and carry away only 75*l.* If you are not ready to diſcharge the debt at the expiration of the year, it is poſſible, by granting a freſh note or bond for 120*l.* you may obtain the loan of the original ſum you have received, *viz.* 75*l.* for another year, at the end of which, you will have to pay 125*l.* including the laſt year's intereſt, which is exactly 50*l.* for the uſe of 75*l.* for two years.

Extravagant as the above contract may appear, it falls infinitely ſhort of ſome caſes which within theſe few years have come before the courts in *Weſtminſter-Hall*, for recovery of the ſecurities given for money ſo lent. For in ſome, very large ſums were lent to young gentlemen of rank and fortune, and the greateſt part was to be taken in goods, the lender not having ſo much caſh in hand; the goods were taken up of a friend of the lender, and as a young nobleman could not know what to do with linens, ſilks, drugs, china, &c. a third perſon in the confederacy, was recommended to buy them of him, perhaps *thirty per cent.* under the eſtimate at which they were delivered to him in lieu of caſh. In one inſtance, it appeared that a young baronet had received no more than 900*l.* in caſh, part of it being the produce of goods, eſtimated at 1000*l.* and ſold for his account at 700*l.*; for a landed ſecurity, to repay 2000*l.* the premium and the loſs upon the goods abſorbing the remainder.

It is neceſſary, however, in this place, to inform thoſe numerous cormorants who prey upon the neceſſities of mankind, that under a ſtatute of bankruptcy a ſtrict ſcrutiny will be made into the nature of the contracts, by which they claim as creditors, and that our preſent diſcerning and upright chancellor will not ſuffer their debts to be proved, if it appears that they are founded on *uſurious* contracts.

A debt made void by ſtatute ought not to be permitted to be proved, as a debt on an uſurious contract; and though the rule of the court of Chancery, is, upon a bill to be relieved againſt demands of uſurious intereſt, not to make void the whole debt, but to make the party pay what is really due; in a commiſſion of bankruptcy, the aſſignees have a right to inſiſt that the whole debt is void, as an uſurious contract. And unleſs the aſſignees and other creditors ſubmit to pay what is really due, the lord chancellor has not power to order it, and applications of this nature have been frequently refuſed. Ex parte Skip. 2 *Vez.* 489.

Accordingly, where *A.* gave a note of hand without conſideration, payable to *B.* two months from the date for 100*l.* *B.* indorſes it over to *Thompſon*, allowing a diſcount of a *guinea* and a *half*, being at the rate of 9 *per cent.* When the note became due, *Thompſon* took a joint bond from the drawer and indorſer for the 100*l.* though he paid only 98*l.* 8*s.* 6*d.* The commiſſioners had admitted him as a creditor under a commiſſion againſt the drawer, but finding out this fact afterwards, they ordered his dividend to be ſtopped. The lord chancellor, upon his petition would not direct him to be

be admitted to his dividend, but ordered an iſſue at law to try whether the bond was uſurious. Ex parte *Thompſon*, 1 *Atk.* 125.

But whatever might be the event of the iſſue directed by the court in this caſe, it ſhould ſeem that if the contract was originally uſurious, it is void, and cannot be proved even in the hands of an innocent indorſee; for upon an action brought on ſuch a note, the defendant's plea of uſury would be a complete bar. *Cook's Bankrupt Laws*, 2d *Edit.* London, 1788.

Having now ſeen how the law ſtands in our own country, let us take a conciſe view of the regulations eſtabliſhed on the continent, to prevent the pernicious conſequences to ſociety of this ſelfiſh vice.

Uſury is ſtrictly prohibited in all *Chriſtian* countries, and in many, banks have been ſet up, with funds to let out on pawns, for thoſe whoſe neceſſities required ſuch aſſiſtance, and to prevent by this means the prevailing iniquitous practice of uſurers; of this number was our *ill conducted Charitable Corporation* here, and that ſtill ſubſiſting at *Amſterdam*, under the title of the *Lombard*, as being firſt inſtituted by thoſe people, or *Bank of Loans*, which is a ſpacious building erected for a warehouſe, in 1550, by the overſeers of the poor, who aſſigned it in 1614 to the city, for the purpoſes aforementioned; where every one who is in want of caſh may have it, on any pawns he ſhall bring there, as none are refuſed, though never ſo vile or valuable, provided they are ſaleable; ſo that every thing will be received, from jewels of a great price, to the leaſt particular of cloaths or furniture; and the intereſt on the loan is paid in the following manner, *viz*

For what is under 100 *guilders*, a *penning per guilder* is paid weekly, which is after the rate of 16 1-4th *per cent. per annum.*

From 100 to 500 is paid an intereſt of 6 *per cent. per annum.*

From 500 to 3000, there is paid 5 *per cent. per annum.*

And from 3000 to 10,000, or above, only 4 *per cent. per annum* is paid.

Whoever have brought in their effects may retrieve them whenever they pleaſe, on returning the ſum they have received, with the intereſt to the day of their taking them back; though with this exception, that as the intereſt is to be paid monthly, that of the month entered on muſt be ſatisfied; but to avoid this, the debtor muſt take care to free his goods exactly at the month's end.

If thoſe, who have brought in their pawns, neglect to free them at the expiration of a year and ſix weeks, or that they do not prolong the time of payment, by ſatisfying the intereſt of the paſt year, the *Lombard* ſells them by auction, and reſerves what they produce more than the ſum lent, charges and intereſt deducted, at the diſpoſition of the proprietors; but if they do not reclaim the ſaid ſurplus in a year after, it is given to the poor houſes, and cannot then by any means be regained.

For the conveniency of thoſe who are deſirous of being unknown, and therefore do not care to carry their effects themſelves to the *Lombard*, there are ſeveral ſmall offices eſtabliſhed in the city, with this inſcription before the door—*Hier gaatmen in de bank van Leeninge*; that is, *here they go to the Lombard*, or *bank*. The people eſtabliſhed in theſe offices take an oath to the *Lombard*, and are obliged to carry in there daily, the effects that are brought to them, under penalty of caſſation and being fined; the *Lombard* pays them eight ſtivers *per* every 100 guilders that it lends on the effects that they bring in: Theſe people take care to carry the goods to the *Lombard*, where they pawn them in their own names, and deliver the money to him who brought them to them, with a note from the *Lombard*, that contains the name of the commiſſary, the quality of the thing upon which the money is taken, and the ſum advanced on it.

If this note happens to be loſt, and the proprietor would reclaim his goods, and reſtore the ſum borrowed, he is not believed on his bare word, nor will the effects be delivered to him, without his giving good ſecurity to return them, if it is found that the note has been made over to another, who comes afterwards to demand them; but if, on the note's being loſt, any one finds it, or even if it is ſtole from the owner, and he that has found it, or ſtole it, carries it, and demands the effects, and pays the loan before the proprietor perceives that he has loſt it, the *Lombard* always delivers them to the bearer, without enquiry whether he is the real proprietor or not; and the true one has forfeited the right he had to reclaim his effects from the bank.

The

The publick ſales made in this houſe, are made during three days in every week. All ſorts of perſons are admitted to the auction; and thoſe which are known, have three months' credit, particularly for diamonds and other jewels.

If it happens, as in effect it does very often, that the goods, merchandize, or jewels, brought to the bank, have been ſtolen, and their owners have diſcovered it, they may reclaim them, on proving the theft, giving ſecurity for their value, and returning the ſum that has been lent on them.

All the *Lombard*'s officers are paid by the city, of which ſome are eſtabliſhed to controul and value clothes or furniture, others upon merchandize, and others upon jewels and plate; for the reception of which there are three warehouſes, and the appraiſers are anſwerable for the price at which they have valued the things that are brought in; in caſe they are ſold for leſs than the valuation, which they have put on them.

The ſums that the *Lombard* have occaſion for, are drawn from the money bank, and all the profit it produces is deſtined for the ſupport of all, or the greateſt part of the hoſpitals, by which method the bank's caſh, which would otherwiſe lie uſeleſs, is of great benefit to the poor, without the publick ſecurity being in any reſpect concerned.

Of theſe *Lombards* there were ſome eſtabliſhed formerly in many parts of the *Low Countries*, and one particularly at *Bruges* in *Flanders*, where money was lent on pawns without any intereſt at all; and in ſeveral cities of *Italy*, there were, and ſtill are, ſeveral *banks of charity*, called *Montes Pietatis*, where caſh is lent on pledges, for which only an intereſt of three or four *per cent. per annum* is required, to pay the ſalaries, &c. of the aſſiſtants, and whoſe funds have been ſettled by the charitable donations of many, who have contributed largely to the poor's relief in this ſhape; and theſe different ways and means have been thought of, and carried into execution, purely to prevent that execrable ſin of *uſury*, and common pawn-broking; and to prevent the calamities the indigent ſuffered from it.

Of Contracts, Bonds, and Promiſſory Notes.

A CONTRACT, in *Latin*, *contractus*, is a covenant, or agreement between two or more perſons, with a lawful conſideration or cauſes, as when a man makes the ſale of any thing to another, for a ſum of money, or covenants, in conſideration of fifty pounds, to make him a leaſe of a farm, &c.

Theſe are good contracts, becauſe there is a *quid pro quo*, or one thing for another; but, if a perſon promiſes me twenty ſhillings, and that he will be debtor to me for it, and after, when I demand the completion of his promiſe, he refuſes me, I cannot have any action for its recovery, becauſe this promiſe was no contract, but a bare promiſe, or *nudum pactum*, though if any thing had been given for the twenty ſhillings, even to the value of a penny, then it had been a good contract. Every contract doth imply in itſelf, an *aſſumpſit* in law for its performance; for a contract would be to no purpoſe, if there were not means to enforce the performance thereof. 1 *Lill.* Abr. 308.

Where an action is brought upon a *contract*, and the plaintiff miſtakes the ſum agreed on, he will fail in his action: But, if he brings this action on the promiſe in law, which ariſes from the debt, then although he miſtakes the ſum, he ſhall recover. *Aleyn* 92.

There is a diverſity, where a day of payment is limited on a *contract*, and where not; for where it is limited, the *contract* is good preſently, and an action lies upon it, without payment, but in the other not; if a man buys twenty yards of cloth, &c. the *contract* is

is void if he do not pay the money presently; but if day of payment be given, there the seller may have an action for the money, and the buyer *trover* for the cloth. *Dyer* 30. 293.

If a man *contract* to buy a horse, or any thing else, but no money is paid or earnest given, nor a day set for payment thereof, nor the purchase is delivered; in these cases no action will lie for the money, or the thing sold, but it may be sold to another. *Plowd.* 309 128.

All contracts are to be certain, perfect, and complete: For an agreement to give so much for a thing, as it shall be reasonably worth, is void for uncertainty; so a promise to pay money in a short time, &c. or to give so much if he likes the thing when he sees it. *Dyer* 91 1 *Bul.* 92.

But if I contract with another to give him ten pounds for such a thing, if I like it on seeing it; this bargain is said to be perfect at my pleasure, though I may not take the thing before I have paid the money; if I do, the seller may have trespass against me; and if he sell it to another, I may bring action of the case against him. *Noy* 104.

If a person agree with another to give so much for his horse as *A. B.* shall judge him to be worth; when he hath judged it, the *contract* is complete, and an action will lie on it, and the buyer shall have a reasonable time to demand the judgment of *A. B.* but, if he dies before his judgment is given, the *contract* is determined. *Perk* Sect. 112, 114 *Shep* Abr. 294

In *contracts*, the time is to be regarded, in and from which the *contract* is made: The words shall be taken, in the common usual sense, as they are taken in that place where spoken; and the law doth not so much look upon the form of words, as on the substance and minds of the parties therein. 5 *Rep.* 83. 1 *Bull.* 175.

A *contract* for goods may be made as well by word of mouth, as by deed in writing, and where it is in writing only, not sealed and delivered, it is the same as by word; but if the *contract* be by writing, sealed and delivered, and so turned into a deed, then it is of another nature, and in this case generally the action on the verbal *contract* is gone, and some other action lies for breach thereof. *Plowd.* 130. 309. *Dyer* 90.

Contracts not to be performed in a year, are to be in writing signed by the party, &c. or no action may be brought on them; but, if no day is set, or the time is uncertain, they may be good without it. 29 *Car.* II. Cap. 3.

And by the same *statute*, no *contract* for the sale of goods, for ten pounds or upwards, shall be good, unless the buyer receive part of the goods sold, or gives something in *earnest* to bind the *contract*, or some note thereof be made in writing, signed by the person charged with the *contract*, &c.

If two persons come to a draper, and one says, let this man have so much cloth, and I will see you paid, there the sale is to the undertaker only, though the delivery is to another by his appointment: but, if a *contract* be made with *A. B.* and the vender scruples to let the goods go without money, and *C. D.* comes to him, and desires him to let *A. B.* have the goods, and undertakes that he shall pay him for them, that will be a promise within the *stat.* 29 *Car.* II. and ought to be in writing. *Mod. Cas.* 249.

All promises and contracts are to receive a favourable interpretation: And such construction is to be made, where any obscurity appears, as will best answer the intent of the parties; otherwise a person, by obscure wording of his contract, might find means to evade and elude the force of it. Hence it is a general rule, that all promises shall be taken most strong against the promiser, and are not to be rejected, if they can by any means be reduced to a certainty. 1. *New Abridg. of Cases in Equity*, 168—But promises are not valid, if the consideration be against law: And where there are frauds in contracts, an action on the case will lie. *Clarke's Epit. of Com. Law.*

CONTRACTS and AGREEMENTS are in many cases of the same signification, as this latter in its *Latin* derivation, *agrementum*, or *aggregatio mentium*, seems to express, signifying a joining together of two or more minds, in any thing done, or to be done; and

BONDS

BONDS are deeds, or obligatory inſtruments in writing, whereby one doth bind himſelf to another, to pay a ſum of money, or do ſome other act; as to make a releaſe, ſurrender an eſtate for quiet enjoyment, to ſtand to an award, ſave harmleſs, perform a will, &c. It contains an obligation with a penalty; and a condition, which expreſsly mentions what money is to be paid, or other thing to be performed, and the limited time for the performance thereof, for which the obligation is peremptorily binding; it may be made on parchment or paper, duly ſtamped, though it is uſually on the latter, and be either in the firſt, or third perſon; and the condition may be either in the ſame deed, or in another, and ſometimes it is included within, and ſometimes endorſed upon the obligation, though it is commonly at the foot of it. *Bro. Obl.* 67.

A *memorandum* on the back of a *bond* may reſtrain the ſame, by way of exception. *Moore* 675.

A *bond* may be by any words, in a writing ſealed and delivered, wherein a man doth declare himſelf to have another man's money, or to be indebted to him; but the beſt form of making it, is that which is moſt uſed. 2 *Shep.* Abr. 477.

If a *bond* be thus, *Know all men by theſe preſents, that I* A. B. *am bound to* C. D. *in the ſum of*, &c. *for payment of which I give full power to him to levy the ſame upon the profits of ſuch lands yearly, till it be paid:* In this caſe, the *obligee* may ſue upon the obligation, or levy the money according to the ſaid clauſe. 3 *Leon.* C. 299.

Where a *bond* is made, *obligo me*, &c. leaving out the words *hæredes, executores, et adminiſtratores*, this is good, and the executors and adminiſtrators ſhall be bound thereby. *Dyer* 13.

An obligation made to one, to the uſe of *A. B.* will be good for him in equity. *Bro. Obl.* 72.

The condition of a *bond* muſt be to do a thing lawful; wherefore *bonds*, not to uſe trades, till or ſow grounds, &c. are unlawful, as they are againſt the publick good, and the liberty of a freeman, and therefore void: And a condition of a bond to do any act, *malum in ſe*, as to kill a perſon, &c. is void: So alſo *bonds* made by dureſs, by infants, feme coverts, &c. And if a woman, through threats, or flattery, be prevailed upon to enter into a *bond*, ſhe may be relieved in Chancery. 11 *Rep.* 53.

If an infant, that is, a perſon under twenty-one years of age, ſeal a *bond* and be ſued thereon, he is not to plead, *non eſt factum*, but muſt avoid the *bond* by ſpecial pleading; for this *bond* is only voidable, and not in itſelf void. 5 *Rep.* 119.

But if a *bond* be made by a *feme covert*, ſhe may plead her coverture, and conclude *non eſt factum*, &c. her *bond* being void. 10 *Rep.* 119.

If a *bond* depends upon ſome other deed, and the deed becomes void, the *bond* is alſo void. A *bond* made with condition not to give evidence againſt a felon, &c. is void; but the defendant muſt plead the ſpecial matter. 1 *Leon.*

Condition of a *bond* to indemnify any perſon from any legal proſecution, is againſt law, and void. 1 *Lutw.* 667.

And if a ſheriff takes a *bond* as a reward for doing of a thing, it is void. 3 *Salk.* 75.

Conditions of *bonds* are to be not only lawful, but poſſible; and when the matter or thing to be done, or not to be done by a condition, is unlawful or impoſſible, or the condition itſelf repugnant, inſenſible, or uncertain, the condition is void, and in ſome caſes the obligation alſo. 10 *Rep.* 120.

But ſometimes the obligation may be ſingle to pay the money, where the condition is impoſſible, repugnant, &c. 2 *Mod.* 285.

If a thing be poſſible at the time of entering into the *bond*, and afterwards becomes impoſſible by the act of God, the act of the law, or of the *obligee*, it is become void; as if a man be bound to appear next term, and dies before, the obligation is ſaved. A condition of a *bond* was, that *A. B.* ſhould pay ſuch a ſum on the 25th of *December*, or appear in *Hilary* term after in the court of *B. R.* he died after the 25th of *December*, and before *Hilary* term, and had paid nothing: In this caſe, the condition was not broken for non-payment; and the other part is become impoſſible by the act of God. 1 *Mod. Rep.* 265.

And

And when a condition is doubtful, it is always taken moſt favourably for the *obligor*, and againſt the *obligee*, but ſo as a reaſonable conſtruction be made as near as can be, according to the intention of the parties. *Dyer* 51.

If no time is limited in a *bond* for payment of the money, it is due preſently, and payable on demand. 1 *Brownl.* 33.

But the judges have ſometimes appointed a convenient time for payment, having regard to the diſtance of place, and the time wherein the thing may be performed; and if a condition be made impoſſible, in reſpect to time, as to make payment of money on the 30th of *February*, &c. it ſhall be paid preſently; and here the obligation ſtands ſingle. *Jones* 140.

Though if a man be bound in a *bond* with condition to deliver ſo much corn upon the 29th day of *February* next following, and that month had then but twenty-eight days, it has been held that the *obligor* is not obliged to perform the condition till there comes a leap-year. 1 *Leon.* 101.

Where one is bound to do an act to the *obligee* himſelf, the doing it to a ſtranger, by appointment of the *obligee*, will not be a performance of the condition. 2 *Bulſt.* 149.

When no place is mentioned for performance of a condition, the *obligor* is obliged to find out the perſon of the *obligee*, if he be in *England*, and tender the money, otherwiſe the bond will be forfeited. But when a place is appointed, he need ſeek no farther. 1 *Inſt.* 210. *Litt.* 340.

And, where no place is limited for payment of money due on a *bond*, the *obligor*, at, or after the day of payment, meets with the *obligee*, and tenders him the money, but he goes away to prevent it, the *obligor* ſhall be excuſed. 8 *E.* IV.

The *obligor*, or his ſervant, &c. may tender the money to ſave the forfeiture of the *bond*, and it ſhall be a good performance of the condition, if made to the *obligee*, though refuſed by him; yet, if the *obligor* be afterwards ſued, he muſt plead that he is ſtill ready to pay it, and tender the money in court. *Co. Litt.* 208.

The condition of a *bond* being for payment of money, it may be performed by giving any other thing in ſatisfaction, becauſe the value of money is certain, and therefore may be ſatisfied by a collateral thing, if the *obligee* accepts it; but if the condition is to do a collateral thing, there it is otherwiſe, and paying money is no good ſatisfaction. 3 *Bulſt.* 148.

The acceptance of a new *bond* will not diſcharge the old one, as a judgment may. *Hob* 68.

One *bond* cannot be given in ſatisfaction of another, but this is where given by the *obligor* himſelf, for it may by others. 1 *Mod.* 221.

If a *bond* be to pay money at ſuch a time, &c. it is no plea for the *obligor* to ſay, that he did pay it; he muſt ſhew at what time, or elſe it may be taken, that the performance was after the time limited. *Noy's Max.* 15.

If a *bond* be of twenty years ſtanding, and no demand be proved thereon, or good cauſe of ſo long forbearance ſhewn to the court, upon pleading *ſolvit ad diem*, it ſhall be intended paid. *Mod. Ca.* 22.

Payment of money without acquittance, is an ill plea to action of debt upon a ſingle bill; but it is otherwiſe upon a *bond*, with condition. *Dyer* 25.

If ſeveral days are mentioned for payment of money on a *bond*, the obligation is not forfeited, nor can be ſued until all the days are paſt: But in ſome caſes, the *obligee* may proſecute for the money due by the *bond* preſently, though it be not forfeit; and by ſpecial wording the condition, the *obligee* may be able to ſue the penalty on the firſt default. 1 *Inſt.* 292.

In a *bond* where ſeveral are bound ſeverally, the *obligee* is at his election, to ſue all the *obligors* together, or all of them apart, and have ſeveral judgments and executions; but he ſhall have ſatisfaction at once; for if it be of one only, that ſhall diſcharge the reſt. If an obligation be joint and not ſeveral, all the *obligors* muſt be ſued that are bound; and if one be proſecuted, he is not obliged to anſwer, unleſs the reſt are ſued likewiſe. *Dyer* 19. 310.

Where two or more are bound in a joint *bond*, and only one is ſued, he muſt plead in abatement, that two more ſealed the *bond*, &c. and aver that they are living, and ſo pray judgment *de billa*, &c. and not demur to the declaration. *Sid.* 420.

If

If a *bond* is made to three to pay money to one of them, they muſt all join in the action, becauſe they are but as one *obligee*. *Yelv.* 177.

If action be brought upon a *bond*, againſt two joint and ſeveral *obligors* jointly, and both are taken by *capias*, here the death or eſcape of one ſhall not releaſe the other; but the ſame kind of execution muſt be taken forth againſt them; it is otherwiſe when they are ſued ſeverally. *Hob.* 59.

When the condition of a *bond* is to do two things, or has divers points, and the *obligee*, ſuppoſing a breach of one of them, doth ſue the *obligor*; if, iſſue being joined upon that, it is found againſt him, and he is barred, the whole obligation is diſcharged: And ſo long as that judgment is in force, he can never proſecute upon any other point. *Dyer* 371. 2 *Shep.* Abr. 487.

If a drunken man gives his *bond*, it binds him; and a *bond* without conſideration is *obligatory*, and no relief ſhall be had againſt it, for it is voluntary, and as a gift. *Jenk. Cent* 169.

A perſon enters voluntarily into a *bond*, though there was not any conſideration for it; if there be no fraud uſed in braining the ſame, the *bond* ſhall not be relieved againſt in equity. But a voluntary *bond* may not be paid in a courſe of adminiſtration, ſo as to take place of real debts, even by ſimple contract; yet it ſhall be paid before legacies. 1 *Chan Caſ.* 157.

An heir is not bound, unleſs he be named expreſsly in the *bond*, though the executors and adminiſtrators are. And if an obligation be made to a man, his heirs or ſucceſſors, the executors and adminiſtrators ſhall have the advantage of it, and not the heir or ſucceſſor, by reaſon it is a chattel. *Dyer* 14. 271.

A declaration need not be according to the letter of the *bond*, where there is any omiſſion, &c. but according to the operation of law upon it. *Mod. Caſ.* 228.

In *bonds* to ſave harmleſs, the defendant being proſecuted, is to plead *non damnificatus*, &c. A *bond* may be from one to one, one to two, three, or more perſons; or from two or more perſons to one, two, three, &c. and the name of the *obligor* ſubſcribed, it is ſaid, is ſufficient, though there is a blank for his chriſtian name in the *bond*. 2 *Cro.* 126.

But where another chriſtian name is in the *bond*, and the *bond* ſigned by the right name, though the jury find it to be his deed, the *obligee* cannot have judgment, for the name ſubſcribed is no part of the obligation. 2 *Cro.* 558. *Mod* 107.

In theſe caſes, though there be a verdict, there ſhall not be judgment. Where an obligor's name is omitted to be inſerted in the *bond*, and yet he ſigns and ſeals it, the court of *Chancery* may make good ſuch an *accident*; and in caſe a perſon take away a *bond* fraudulently, and cancels it, the *obligee* ſhall have as much benefit thereby as if not cancelled. 3 *Chan. Rep.* 99. 184.

If a *bond* has no date, or a falſe date, if it be ſealed and delivered, it is good. A plaintiff may ſuggeſt a date in a *bond*, where there is none, or it is impoſſible, &c. where the parties and ſum are ſufficiently expreſſed. 5 *Mod* 282.

A *bond* dated on the ſame day on which a releaſe is made of all things, *uſque diem datus*, &c. is not thereby diſcharged. 2 *Roll. Rep.* 255.

And where a *bond* is made to another's uſe, it muſt be ſo laid in the obligation, or he cannot releaſe it, &c. *Jenk. Cent.* 225.

A perſon ſhall not be charged by a *bond*, though ſigned and ſealed, without delivery, or words, or other thing amounting to a delivery. 1 *Leon* 140.

A *bond* may be good, though it contains falſe *Latin*, or falſe *Engliſh*, if the intent appears, for they do not make the *bond* void. 2 *Roll. Abr.* 146.

By the condition of a *bond*, the intent of what ſum was in the obligation may be more eaſily known and explained. *Moor* 864. 2 *Roll* 146.

And the condition of the *bond* may be recorded, and then the plaintiff demur, &c. *Lutw* 422.

Likewiſe the conditions of *bonds* may expound to whom an *obligor* is bound to pay money; as if *A.* binds himſelf to *B.* to be paid to *A.* whereas it ſhould be to *B.* which obligation is good, and the *ſolvendum* void. 1 *Inſt.* 108. 209.

Interlineation in a *bond*, in a place not material, will not make the *bond* void; but if it be altered in a part material, it ſhall be void. 1 *Nelſ. Abr.* 391.

And

And a bond may be void by razure, &c. as where the date, &c. is raſed after delivery, which goes through the whole. 5 *Rep.* 23.

Such words, whereby the intention of the parties may appear, are ſufficient to make the condition of a *bond* good, though they are not proper; and it ſhall not be conſtrued againſt the expreſs words. 1 *Saund.* 66.

If the words in a *bond*, at the end of the condition, *That then this obligation to be void*, are omitted, the condition will be void, but not the obligation: But if the words, *or elſe ſhall ſtand in force*, be left out, it has no effect to hurt either the condition or obligation. The ſtealing of any bond or bill, &c. for money, being the property of any one, is made felony, as if the offenders had taken other goods of the like value. 2 *Geo.* II. C. 25.

The Form of a Bond for Payment of Money, with an Obligation from one to one.

KNOW all men *by theſe preſents, that I*, A. B. *of the pariſh of*, &c. *in the county of*, &c. *merchant, am held and firmly bound to* C. D. *of*, &c. *in the county aforeſaid, gentleman, in two hundred pounds, of good and lawful money of* Great-Britain, *to be paid to the ſaid* C. D. *or his certain attorney, executors, adminiſtrators, or aſſigns; to which payment, well and truly to be made, I bind myſelf my heirs, executors, and adminiſtrators, firmly by theſe preſents, ſealed with my ſeal. Dated the twenty third day of* May, *in the twenty ſecond year of the reign of our ſovereign lord* George *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith*, &c. *and in the year of our Lord one thouſand ſeven hundred and eighty-two.*

The CONDITION of this obligation is ſuch, that if the above-bound *A. B.* his heirs, executors, and adminiſtrators, do and ſhall well and truly pay, or cauſe to be paid, unto the above-named *C. D.* his executors, adminiſtrators, or aſſigns, the full ſum of one hundred pounds, of lawful money of *Great-Britain*, with legal intereſt for the ſame, on or before the twenty-third day of *November* next enſuing the date hereof; then this obligation to be void, or otherwiſe to be and remain in full force and virtue.

Signed, ſealed, and delivered
in the preſence of

A Bond with a Condition from two to one.

KNOW all men *by theſe preſents, that we*, A. B. *of*, &c. *and* C. D. *of*, &c. *are held and firmly bound to* E. F. *of*, &c. *in three hundred pounds, of good and lawful money of* Great Britain, *to be paid to the ſaid* E. F. *or his certain attorney, his executors, adminiſtrators, or aſſigns; to which payment, well and truly to be made, we bind ourſelves, and each of us by himſelf* (if one of the obligors be a woman, write thus: *viz. by him and herſelf*) *for and in the whole, our heirs, executors, and adminiſtrators, and each of us, firmly by theſe preſents, ſealed with our ſeals. Dated*, &c.

The CONDITION of this obligation is ſuch, that if the above-bound *A. B.* and *C. D.* or either of them, their, or either of their heirs, executors, or adminiſtrators, do and ſhall well and truly pay or cauſe to be paid, to the ſaid *E. F.* his executors, adminiſtrators, or aſſigns, the full ſum of one hundred and fifty pounds, of lawful money of *Great Britain*, with legal intereſt for the ſame, on or before the, &c. which ſhall be in the year of our Lord, &c. then, &c. otherwiſe, &c.

And the conditions are the ſame from three or more to one, or when the obligors, as well as the obligees, are in the plural; as they are *vice verſâ*, when the obligors and obligees, vary in the reverſe to the afore-mentioned; and I think what I have

quoted is ſufficiently clear, to enable every one to fill up a bond ſuitable to his occaſion; which I have done with a view more for the ſervice of my country readers, than thoſe in this metropolis, as theſe latter may readily furniſh themſelves with printed bonds of all ſorts, which is not the caſe with the others, though this want they may ſupply by a draught themſelves on ſtamped paper, where they have not an opportunity to get it done by an attorney, which however I would always recommend when to be effected, at leaſt if the caſe is any thing more than common.

A Penal Bill for Payment of Money.

KNOW all men *by theſe preſents, that I,* A. B. *of,* &c. *do owe unto* C. D. *of,* &c. *the ſum of one hundred pounds of lawful money of* Great-Britain, *to be paid unto the ſaid* C. D. *his executors, adminiſtrators, or aſſigns, on or before,* &c. *next enſuing the day of the date hereof; for which payment, well and truly to be made, I bind myſelf, my heirs, executors, and adminiſtrators, to the ſaid* C. D. *his executors, adminiſtrators, or aſſigns, in the penal ſum of two hundred pounds, of like lawful money, firmly by theſe preſents.* In witneſs whereof I have hereunto ſet my hand and ſeal, the, &c. in the year of, &c. ſealed, &c.

A ſingle Bill for Payment of Money, that is, *a Bill without a Penalty.*

KNOW all men *by theſe preſents, that I,* A. B. *of,* &c. *do owe and am indebted to* C. D. of, &c. *the ſum of one hundred pounds, of lawful money of* Great-Britain, *to be paid to the ſaid* C. D. *his executors, adminiſtrators, or aſſigns, on or before,* &c. In witneſs, &c.

PROMISSORY NOTES being obligatory like bonds, &c. I have thought it proper to inſert them in the ſame chapter, though they are in many reſpects very different; theſe notes are, like a bill of exchange, aſſignable by indorſement, and in caſe a time of payment be therein aſcertained, they will bear an intereſt, provided they are proteſted within three days after becoming due; ſo that it is beſt in all caſes to inſert a certain time of payment, except where the ſolvency of the drawer or debtor is doubted: The indorſer becomes equally liable with the drawer of theſe notes; and when once an indorſable one, *that is,* payable to order, is transferred to a third perſon, it is no longer in the power of the indorſer to acquit or free the drawer from being liable, either by releaſe, or other inſtrument in writing, as the property the indorſer before had in the note is entirely removed by his indorſement; in which it differs from a bond or obligatory bill; for there the obligee, after having aſſigned the ſame to a third perſon, may, by releaſe or other *ſpecialty,* deſtroy the validity of the obligation, and conſequently free the obligor from the burden thereof.

The Form of a Promiſſory Note, commonly called a Note of Hand.

THREE months after date, or on demand, *I promiſe to pay to Mr.* Richard Thomas, *or order, one hundred and fifty pounds, for value received, in* London, *the 23d of* December, 1790.

L. 150. A. B.

The indorſement ſhould be the ſame as on a bill of exchange; and as there are ſome acts of parliament in force, which have altered the quality of theſe notes and inland bills, from what they were formerly, I ſhall give an abſtract of them there, without ſeparating what relates to the one from that concerning the other, as I deem this method the moſt proper; more eſpecially as I ſhall ſoon proceed to treat of inland bills.

All

All bills of exchange drawn in, or dated from any place in *England*, &c. for the ſum of 5*l.* or upwards, upon any perſon in *London*, or any other place, in which bills the value ſhall be expreſſed to be received, drawn payable at a certain number of days, &c. after the date thereof, may after acceptance, which ſhall be by underwriting under the party's hand, and the expiration of three days after the ſame ſhall be due, be proteſted by a notary publick, or, in default of ſuch notary publick, by any other ſubſtantial perſon of the place, before two witneſſes, refuſal or neglect being firſt made of due payment; which proteſt ſhall be made under a copy of the ſaid bill, in the form following: 9 and 10 *W.* III. Cap. 17. S. 1.

KNOW all men, that I A B. *on the day of at the uſual place of abode of the ſaid have demanded payment of the bill, of which the above is the copy, which the ſaid did not pay; wherefore I, the ſaid do hereby proteſt the ſaid bill. Dated at this day of*

Which proteſt ſhall be notified within fourteen days after, to the party from whom the bills were received, who, upon producing ſuch proteſt, is to repay the ſaid bill, with intereſt and charges from the proteſting; for which proteſt there ſhall not be paid above ſix-pence; and in default of ſuch proteſt; or due notice within the days limited, the perſon ſo failing ſhall be liable to all coſts, damages, and intereſt.

If any ſuch inland bills be loſt or miſcarry within the time limited for payment of the ſame, the drawer of the ſaid bills ſhall give other bills of the ſame tenor, ſecurity being given, if demanded, to indemnify him, in caſe the ſaid bills ſo loſt or miſcarried, be found again. S. 3.

All notes ſigned by any perſon or perſons, body politick or corporate, or by the ſervant or agent of any corporation, banker, goldſmith, merchant, or trader, who is uſually intruſted by them to ſign ſuch promiſſory notes for them, whereby ſuch perſons, &c. ſhall promiſe to pay any other perſon, &c. or order, or bearer, the money mentioned in ſuch note, ſhall be conſtrued to be, by virtue thereof, due and payable to ſuch perſon, &c. to whom the ſame is made payable. And alſo ſuch note payable to ſuch perſon, &c. or order, ſhall be aſſignable over in manner as inland bills of exchange are, by cuſtom of merchants; and the perſon, &c. to whom ſuch money is payable, may maintain an action for the ſame, as they might upon ſuch bills of exchange. And the perſon, &c. to whom ſuch note ſo payable to order is aſſigned or indorſed, may maintain an action againſt the perſon, &c. who ſigned, or any who indorſed the ſame, as in caſes of inland bills, and recover damages and coſts of ſuit; and in caſe of nonſuit, or verdict againſt the plaintiff, the defendant ſhall recover coſts. 3 and 4 *Ann.* Cap. 9. S. 1.

Such actions ſhall be brought within the time appointed for bringing actions, *per* 21 *Jac.* I. *Cap.* 16. *for Limitation of Actions.* S. 2.

No body politick ſhall have power to give out notes, other than they might before this act. S. 3.

In caſe the party, on whom an inland bill of exchange ſhall be drawn, ſhall refuſe to accept the ſame, by underwriting the ſame, the party to whom payable ſhall cauſe ſuch bill to be proteſted for non-acceptance, as in caſe of foreign bills, for which proteſt ſhall be paid 2*s.* and no more. S. 4.

No acceptance of ſuch inland bill ſhall charge any perſon, unleſs underwritten or indorſed; and if not ſo underwritten or indorſed, no drawer to pay coſts, damages, or intereſt, unleſs proteſt be made for non-acceptance, and, within fourteen days after proteſt, the ſame to be ſent, or notice thereof given, to the party from whom ſuch bill was received, or left in writing at his uſual place of abode. And if ſuch bill be accepted, and not paid within three days after due, no drawer ſhall pay coſts, damages, or intereſt thereon, unleſs proteſt be made and ſent, or notice given as aforeſaid; nevertheleſs the drawer ſhall be liable to payment of coſts, damages, and intereſt, if any one proteſt be made for non-acceptance, or non-payment, and notice be ſent, given, or left. S. 5.

No ſuch proteſt ſhall be neceſſary for non-payment, unleſs the value be expreſſed in ſuch a bill, to be received, and unleſs the bill be drawn for 20*l.* or upwards, and the

the proteſt ſhall be made for non-acceptance by perſons appointed *per* 9 *Will.* III. Cap. 17. 3 and 4 *Ann.* Cap. 9. S. 6.

If any perſon accept ſuch bill of exchange in ſatisfaction of any former debt, the ſame ſhall be eſteemed a full payment, if he doth not uſe his endeavour to get the ſame accepted and paid, and make his proteſt for non-acceptance or non-payment. S. 7.

Nothing herein ſhall diſcharge any remedy that any perſon may have againſt the drawer, acceptor, or indorſer of ſuch bill. S 8.

This act ſhall continue for three years. S. 9.

Made perpetual by 7 *Ann.* Cap. 25.

STAT. 15 *Geo.* III. Chap. 51 After reciting, that various notes, bills of exchange, and draughts for money for very ſmall ſums, had for ſome time paſt been circulated or negociated in lieu of caſh, in *England*, to the great prejudice of trade and publick credit; and many of ſuch bills and draughts being payable under certain terms and reſtrictions, which the poorer ſort of manufacturers, artificers, labourers, and others could not comply with, without being ſubject to great extortion and abuſe, *Enacts*—

Sect. 1. That all notes, bills, draughts, or undertakings being negotiable for payment of any money, leſs than 20 *ſhillings*, ſhall be void

Sect. 2. If any perſon, by any means whatever, publiſh or negociate any ſuch notes, &c. or on which leſs than 20*s.* ſhall be due, he ſhall pay 20*l.* or not leſs than 5*l.*

STAT. 17 *Geo.* III. Chap. 30 After reciting the above act of 15 *Geo.* III. Chap. 51. and that the ſame had been attended with very ſalutary effects; and that in caſe the proviſions thereof were extended to a farther ſum, the good purpoſes of it would be further advanced, *Enacts*—

Sect 1. That all notes, &c. negotiable for 20*s.* or above, and leſs than 5*l.* that ſhall remain undiſcharged, and made within *England*, after 1 *Jan.* 1778, ſhall ſpecify the names and places of abode of the reſpective perſons, to whom, or to whoſe order, the ſame ſhall be made payable, and ſhall be dated before, or when drawn, and not on any ſubſequent day, and be payable within 21 days after their date, and not negotiable after the time of payment; and every indorſement ſhall be before time of payment, and be dated at, or not before the time of making thereof; and ſhall ſpecify the name and place of abode of the perſon to whom, or to whoſe order, the money is to be paid; and that the ſigning of every ſuch note, &c. and indorſement ſhall be atteſted by a witneſs, and drawn as follows:

Leeds, 20 *Nov.* 1777.

Twenty days after date, I promiſe to pay *James Hataly*, of *Fleet-ſtreet*, *London*, hoſier, or his order, the ſum of four pounds ten ſhillings, for value received by

Charles Jebb.

L. 4 10 ●

Witneſs

Richard Bunn.

And the indorſement *Toties Quoties.*

Norwich, 31 *May*, 1778.

Twenty-one days after date, pay to *John Trott*, of *Fetter-lane*, *London*, or his order, the ſum of two pounds and two ſhillings, value received, as adviſed by

William Holt.

To *Matthew Wilks*, of *Shoreditch*, in the county of *Middleſex.*

Witneſs

Mary Munt.

And the indorſement *Toties Quoties.*

15 *March*, 1777.

Pay the contents to *Benjamin Hopkins*, of *Guildhall*, *London*, or his order.

John Trott.

Witneſs

Chriſtopher Cowper.

And

And that all notes, &c. as before, or in which 20*s.* or above, and leſs than 5*l.* ſhall be undiſcharged, and iſſued within *England*, at the time aforeſaid, in any other manner, and alſo every indorſement ſhall be void.

Sect. 2. Publiſhing or negociating in *England*, any note, &c. of or under the above value, made in any other manner than hereby permitted; and alſo negociating ſuch laſt mentioned note, &c. after the time aforeſaid, is prohibited under the like penalties and forfeitures, and to be recovered and applied as by 15 *Geo.* III. Chap. 51. Sect. 3, &c. is directed. Which is by ſummary proceeding before a juſtice of peace

Sect. 2. That all notes, &c. iſſued before 1 *Jan.* 1778, to be payable within *England* on demand; and recoverable as directed by the act, with reſpect to notes, &c. iſſued before 24 *June*, 1775, and all matters contained in 15 *Geo.* III. are to be in force in *England* as to notes, &c. iſſued after 1 *Jan.* 1778, and previous thereto.

Sect. 3. Both acts are to continue not only for the reſidue of five years, in the former act, but alſo for the further time of five years.

Of Bills of Exchange; and concerning the croſs ones of Europe, *known to Foreigners under the Denomination of Arbitrations of Exchange.*

THE original traffick of mankind, by way of barter, becoming troubleſome, neceſſity led them to the invention of ſome more eaſy manner of continuing their commerce; and nothing being found ſo commodious a medium as money, this was many ages ſince adopted to carry on their commercial tranſactions, firſt by the *Hebrews*, then by the *Romans*, and ſince continued and improved by almoſt every civilized nation; and for the ſtill greater conveniency of foreign trade, they made coins of the moſt valuable metals, that might anſwer the intention of an eaſy carriage, by being leſs bulky and heavy than baſer ones; and this method being generally approved of and practiſed by moſt trading people, they by degrees fell into an improvement even of this, and ſubſtituted remittances and exchanges by bills, to ſave the expence, riſque, and trouble, which the tranſport of money from one kingdom to another occaſioned. The *Jews*, baniſhed *France* in the reigns of *Philip Auguſt* and *Philip le Long*, are ſuppoſed by ſome, to have been the original inventors of it: whilſt others, with greater appearance of probability, aſſign the contrivance to the *Gibelins*, on their being expelled *Italy* by the faction of the *Guelphs*; though the motives given for both are the ſame, *viz.* their endeavours to withdraw their abſconded effects with the ſecrecy neceſſary to prevent their confiſcation; and to this purpoſe they gave bills on their private friends to foreign merchants on the ſums agreed on, and theſe were regulated by the different value of the coins exchanged; and as many of theſe bills came back unpaid, it gave birth to the charge of re-exchange, firſt begun by the aforeſaid *Lombards*, and theſe, after different modifications, fixed it into a branch of buſineſs. They retired, on the firſt expulſion from *Italy*, to *Lyons* in *France*, and from thence ſpread themſelves into many other trading cities of that, and other kingdoms of *Europe*; and there is ſtill a ſtreet in *Paris* bearing their name, from its having been a quarter where the greateſt part of them reſided, for carrying on their banking buſineſs; and it is owing to the ſame reaſon, and to perpetuate the memory of the great buſineſs exerciſed there by theſe people, and by them taught to the *Dutch*, that the place where the exchange ſtands at *Amſterdam* was at firſt, and ſtill continues to be, called after them, as does a ſtreet in *London* from the ſame motive, ſo that it was theſe people who firſt ſowed the ſeeds of theſe negociations

in

in the minds of the *Belgick* merchants, who duly cultivated and ſpread them all over *Europe* for the eaſier conducting mercantile affairs, and at the ſame time to prevent the exportation of their current coin in lieu of theſe paper ones, if I may ſo term them; and this was found ſo beneficial and advantageous to trading kingdoms as to merit and engage the protection of ſeveral princes for its encouragement and increaſe; among which ſome of our former kings made ſeveral regulations concerning it; *Edward* III. cauſed certain tables to be ſet up at *Dover* and other parts of the realm, declaring the value of the ſundry ſpecies of coins current in the countries trading with his ſubjects, and the allowance merchants were to give to be accommodated with remittances; as may be ſeen in the many good laws of his reign. Theſe tables and exchanges were ſubject to the direction of the king's mint-maſter, who made them *par pro pari*, or value for value, with a reaſonable allowance to thoſe who were appointed to interfere as exchangers, for their trouble; and many acts have been paſſed ſince by ſucceeding princes concerning them.

But as commerce varied, ſo did exchanges, though they were generally reduced to four, *viz. Cambio Commune, Cambio Real, Cambio Sicco, and Cambio Fictitio.*

Cambio Commune, in *England*, was that which was conſtituted by the ſeveral kings, who having received monies in *England*, would remit by exchange the like ſums to be paid in another kingdom, according to the regulation of the above-mentioned tables.

Cambio Real, was when monies were paid to the exchanger, and bills were drawn without naming the ſpecies, but according to the value of the ſeveral coins, and indeed was no more than the payment of money in *England* with a proviſo to be repaid the juſt value in ſpecie in another country, according to the price agreed on between the exchanger and deliverer, to allow or pay for the exchange of the money and the loſs of time.

Cambio Sicco, or dry exchange, is when a merchant hath occaſion for 500*l.* for a certain time, and would willingly pay intereſt for the ſame, but the uſurious lender being deſirous to take more than the ſtatute allows, and yet willing to avoid its penalty, offers the 500*l.* by exchange for *Cadiz*, whereunto the merchant agrees; but having no correſpondence there, the lender deſires him to draw his bill on the ſaid place, payable at double or treble uſance, by any feigned perſon, as the exchange ſhall then govern, with which the merchant complies; and on receipt of the bill, the bankers pay the money, and remits the bill to ſome friend of his at *Cadiz* to procure a proteſt there for non-acceptance, the charge of which with the exchange and intereſt, the merchant is to pay his creditor; and theſe expences formerly were very conſiderable.

Cambio Fictitio, is when a merchant hath occaſion for goods, but cannot well ſpare money for their payment; and the owner of them, to ſecure his advantage, and avoid the penalty of the law, acts as the uſurer in the former caſe, and obliges the buyer to defray the expences of re-exchange, &c.

Theſe two laſt methods of raiſing money for the neceſſitous were prohibited by an act of parliament in the 3d and 4th of *Henry* VII. but on account of the baſe monies coined by *Henry* VIII. at the ſiege of *Bologne*, exchanges were diſcontinued, and the aforeſaid preſſures and abuſes became again current in the reign of *Edward* VI. which occaſioned all exchanges to be prohibited for a ſhort time, but this being found of great inconvenience and detriment to trade, it was again reſtored; though almoſt quite neglected, and the illegal part of it connived at in the ſucceeding reign of *Queen Mary*.

The juſt and true exchange for monies that is at this day uſed both in *England* and other countries, by bills, is *par pro pari*, or value for value; ſo that the *Engliſh* exchange, being grounded on the weight and fineneſs of our own money, and the weight and fineneſs of thoſe of each other country, according to their ſeveral ſtandards, proportionable in their valuation, which being truly and juſtly made, aſcertains and reduces the price of exchange to a ſum certain for the exchange of monies to any nation or country whatſoever.

As money is the common meaſure of things between man and man within the realm, ſo is exchange between merchant and merchant within and without the realm, the which is properly made by bills, when money is delivered ſimply in *England*, and bills received for the re-payment of the ſame in ſome other country either within or without

without the realm, at a price certain, and agreed upon between the merchant and the deliverer; for there is not at this day any peculiar or proper money to be found in ſpecie whereupon outland exchanges can be grounded, therefore all foreign coins are called imaginary.

Having thus far premiſed and ſhewn the original and nature of exchanges, I ſhall deſcend to particulars, and endeavour, in the cleareſt manner I can, to inform my reader of every circumſtance neceſſary to be known in the circulation of bills; and of all ſteps to be taken towards their recovery; of their form, current courſes, and the laws concerning them, both here and in every other part of *Europe*; that this nice branch of commerce may be rendered more intelligible, and be better underſtood than it commonly is, or can be, except duly explained: As cuſtoms in their formation, times of running, and falling due, days of grace, &c. are almoſt as various as each *European* nation is from another; and as I conſider this to be the moſt intricate part of mercantile literature, I ſhall be as extenſive in my ſentiments and quotations about it as the nature of the thing requires, without fearing the cenſure of my readers for prolixity, which however I ſhall endeavour to avoid incurring, and be as conciſe as my capacity will permit, without curtailing what is neceſſary to be ſaid on ſo important a ſubject.

A bill of exchange is commonly drawn on a ſmall piece of paper, and compriſed in two or three lines, being ſo noble and excellent, that though it cannot properly, as is conceived, be called a ſpeciality, becauſe it wanteth thoſe formalities, which by the common law of *England* are thereunto required, as ſeal, delivery, and witneſſes; yet it is equivalent thereunto, if not beyond, or exceeding any ſpeciality or bond in its punctuality and preciſe payment; for if once accepted, it muſt be paid when due, otherwiſe the acceptor loſes his credit. *Roberts*'s Merchant's Map of Commerce. *Marius*'s Advice, Pag. 3.

There are ordinarily four perſons requiſite in making an exchange, beſides the broker, *viz.* two at the place where the money is taken up, and two where it is payable; as 1ſt, the *deliverer*, *giver*, *remitter*, or *negociator*, being the perſon who delivers the money—2dly, the *taker* or *drawer*, who receives or takes up the money by exchange—3dly, the party who is to pay the money in virtue of the bill drawn on him, commonly termed the *acceptant*—4thly, the perſon to whom the bill is made payable, and is to receive it, called the *poſſeſſor* or *holder* of it.

But ſometimes only three are concerned in an exchange, *viz.* the *drawer*, the *deliverer*, who has the bill made payable to himſelf or order, and value of him, and the party that is to pay it, the *deliverer* carrying it himſelf and receiving it.

There is likewiſe another way, wherein only three are neceſſary, as 1ſt, the *drawer*, 2dly, the party on whom it is drawn, and 3dly, he to whom it is payable; for the *drawer* having money in his hands belonging to the perſon in whoſe favour the bill is drawn, confeſſes value received in his own hands, and charges it to his friend or factor, payable to his creditor. Ditto, p. 4, and 5.

And there is yet one way more, wherein monies may be remitted only with the intervention of three perſons, 1ſt, the *taker*, 2dly, the *deliverer*, and 3dly, the *party to whom payable*; as thus: If I was at *Exon*, and intended for *London*, I would take up money there, and give bills of exchange for the ſame, drawn upon myſelf, payable to whom the deliverer ſhould appoint in town.

Money may likewiſe be exchanged between two perſons only, *viz.* the *drawer* and he on whom it is drawn; the drawer making a bill of exchange payable to himſelf or order for value in himſelf, ſubſcribes the bill, and directs it to the party that owes him money, and is to pay it by exchange; by which bill, when he on whom it is drawn hath accepted it, he becometh debtor to the drawer, and this latter, before the bill falls due, doth negociate it with another man, and by this means draws the money in at the place of his reſidence, and makes only an aſſignment on the bill, payable to him of whom he hath received the value.

All theſe methods of exchanges are termed real exchange, and ſome or all of them will naturally occur to a man in buſineſs; therefore the better to conduct my reader to a perfect underſtanding of them, he ought to be acquainted, that as the monies and ſpecies of almoſt every nation differ, not only in their current prices, but in their intrinſick value, there is a juſt and certain *par* eſtabliſhed between them, according to the

real

real and effective worth of each ſpecies, without any regard had to their currency in the countries where they are coined, and the *par* is by ſome authors ſuppoſed to be of two ſorts, *viz.* the one of real monies, and the other of exchanges, or imaginary ſpecies, though both ſeem to be the ſame thing, as having a neceſſary dependance upon each other.

By the *par* of real monies is to be underſtood, *the equality of the intrinſick value of the real ſpecies of any country with thoſe of another*; and by that of exchanges, *the proportion that the imaginary monies of any country bear to thoſe of another*. So that the riſe and fall of an exchange muſt be attributed either to the current price of the coins of any country, or to an extraordinary demand in one place for money in another, or ſometimes it is owing to both; and I think it may eaſily be proved from the very etymology of the word *exchange*, that the variation of the current coins or monies of any country in a manner conſtitutes and gives it being, at leaſt has a very great influence on it, as it is only, according to the aforeſaid definition, a bartering or exchanging the money of one kingdom with that of another, which is always effected by the intervention of two or three lines of writing on a ſlip of paper, as I have mentioned before; and I ſhall now proceed to ſhew what the obligation of every one is who may be concerned in it

And 1ſt, of the *drawer*, who in treating about, or negociating a bill of exchange, muſt have a ſtrict regard to his credit, and never give his draughts at an under-exchange, as this is a certain indication of his want both of caſh and credit, though without an impeachment of either he may do his buſineſs, although ſomething under the very height of the courſe, as this cannot always be obtained by every one; therefore when a drawer is not notoriouſly under the mark, he will tranſact his affairs with reputation; and if his ſole view in drawing proceeds from a proſpect of advantage, without any mixture of neceſſity, he may watch his juncture for ſucceeding in his deſigns by regulating his draughts or remittances according to the plenty or ſcarcity of money or bills.

2. If, in negociating a bill of exchange, only the price is mentioned without any other conditions, they ſhall in this caſe be conſtrued to be ſuch as the cuſtoms of the place to which the bill is directed ordinarily allow of, in all reſpects.

3. A drawer ought to obſerve before he ſubſcribes a bill, and a remitter before he ſends it away, that it be well and truly made, with all the neceſſary requiſites fully expreſſed in it, which I ſhall here hint for their government; and 1ſt, it ought to have its date rightly and clearly expreſſed—2dly, that it names the place where it was made and concluded on—3dly, that the ſum be expreſſed ſo diſtinctly both in words and figures, that no exceptions can be taken againſt it—4thly, that the payment thereof be ordered and commanded—5thly, that the time of payment be not dubiouſly expreſſed, nor ſooner or later than has been agreed on—6thly, the remitter muſt eſpecially obſerve that the name of the perſon to whom payment is to be made, be well and truly ſpelled; or if it be made to his order, that thoſe words be clearly written—7thly and 8thly, he muſt alſo obſerve if his name be therein, and the value of him received be expreſſed—9thly, he muſt obſerve that the bill be ſubſcribed by the drawer—10thly, the drawer muſt principally look to the direction of the bill, that it be true and directed to the right perſon—11thly, they muſt both obſerve, that the place wherein the payment muſt be made, and the coin, or ſpecies wherein it muſt be paid, be fully expreſſed in the ſuperſcription or body of the bill: And if a drawer draws upon one who lives not at the place where the bill is intended to be paid, then the remitter muſt obſerve, that as well the place where the perſon lives that is to pay, as the place where the payment muſt be made, be expreſſed

4. A drawer acts imprudently when he gives more bills than one for the ſame ſum, to the ſame perſon, and under the ſame date, as this may be an occaſion of miſtakes; therefore if two bills for one thouſand dollars are agreed for, it is better to make them for unequal ſums, than five hundred each.

5. It is a cuſtom in *England* for the drawer to deliver only the firſt bill on the day of agreement, and to recover on the 2d and 3d, which are ſent to the remitter for payment before the next poſt goes out; and a drawer ſhould always obſerve to note how many bills he gives, leſt by a repeated loſs he ſhould be led into an error through forgetfulneſs, and give the duplicate of one he had given before.

6. Generally,

6. Generally, in all bills of exchange, the drawer is bound to the perſon from whom the value is received; as the acceptor is to him to whom it is made payable; for although the drawer and acceptor are both bound in the bill, and both equally liable for the payment thereof, yet they are not commonly both bound to one man; I ſay commonly, for if the taker of the bill be ſervant to the party to whom the bill is payable, then indeed the drawer may be ſaid to be bound to the party to whom it is payable, as well as the acceptor; or if he who pays the value be the principal, and he remits his own money by exchange, payable to his agent, in this caſe likewiſe, both drawer and acceptor may be ſaid to be bound to the purchaſer of the bill; but for the generality, in ſums remitted and drawn between merchant and merchant, it is otherwiſe, as the drawer is properly bound to one, and the acceptor to another, though both of them are liable till the bill be ſatisfied; ſo that if the accepted bill be not paid at the time, and proteſt made for non-payment, and there be occaſion to commence a ſuit in law againſt the drawer, it muſt be entered in the name of the party from whom the value was received; and in like manner, if a ſuit be commenced againſt the acceptor, it muſt be made and proſecuted in the name of him to whom the bill is made payable; for probably the drawer takes no great notice to whom it is made payable, being directed therein by the perſon that takes the bill; neither doth he who accepts the bill much regard the purchaſer of it, but only regarding the party who drew it, with whom he correſponds, and him to whom it is made payable, to whom by his acceptance he binds himſelf for the payment; and ſo likewiſe where there are any aſſignments on bills negociated, always the party that receives the value is directly bound to him of whom he hath received it, and the acceptor to the laſt aſſigned. *J. Marius*, P. 22.

7. If a merchant after accepting a bill of exchange, becomes inſolvent, or hath done or ſuffered any thing publickly againſt his credit, in the interim before the bill under his acceptance falls due, the holder, on hearing ſuch a report, ſhould by a notary demand of the acceptor a better ſecurity, and on not obtaining it, cauſe a proteſt to be made for want thereof, and ſend it away by the very next poſt, that the remitter may have an immediate opportunity to demand and procure ſecurity from the drawer; and when the bill is due, if it is not paid, another proteſt muſt be made for non-payment, and forwarded as the other; for which proteſts the drawer muſt be anſwerable, and pay the charge of them jointly with thoſe of poſtage, re-exchange, if the money be re-drawn, commiſſion, and brokage.

8. When any proteſt is received either for want of acceptance, or better ſecurity, the perſon to whom it is ſent muſt preſently repair with it to the drawer or indorſer of the bill, and upon ſight thereof, he muſt give a ſatisfactory ſecurity, if his own is not ſatisfactory, for re-payment of the money received, with re-exchange and charges, if it is not paid when due; and it is cuſtomary in ſuch caſes to make a depoſit ſuitable to the value, or to procure ſome perſon of unexceptionable credit to be bound for its punctual diſcharge.

9. It is cuſtomary, as I have obſerved before, for a drawer in *London* to deliver his firſt bill to the perſon agreed with, on the day of its negociation, and to recover on the ſecond or third bill, retained till the ſucceeding poſt, ſo that it has ſometimes happened through misfortunes, though oftener with deſign, that the remitter has abſconded or failed before payment, ſo that the bill arriving before the advice of the failure or knavery, is accepted and muſt be paid, though equity would certainly give relief to the party aggrieved, in caſe of fraud, provided the deceiver could be found.

10. And if the acceptor of ſuch a bill becomes inſolvent, or refuſes to pay it when due, the drawer is obliged for its diſcharge, with re-exchange, proviſion, &c. although he has not received its value.

11. If a merchant draws a bill of exchange for his own account, and remits his correſpondents others, or caſh to diſcharge it, or orders him to re-value for its amount, and in this laſt caſe, the re-draughts are accepted; though the factor becomes inſolvent, or retires with the money, whilſt the bill is running on him, the merchant ſhall be obliged to pay the bill returned proteſted, with all charges of re-exchange, &c. by

which means he furniſhes not only theſe, but the value of the bill twice, ſo that a more than common regard ſhould be had to the character of the perſon employed in ſuch tranſactions.

12. If a drawer fails before receiving value for his bill given, and the remitter hath the bill ſtill in his hands, he ſhould reſtore it to the creditors or truſtees of his drawer's effects; but if they refuſe to admit it and inſiſt on his performing the contract, he is obliged to a compliance, and muſt demand acceptance, and endeavour to procure payment of the ſame, though not till the creditors or truſtees who urge him thereto have given him ſatisfactory ſecurity, for the payment of re-exchange and incident charges, in caſe this negociation ſhould return with proteſt; and till they do this, they cannot oblige him to pay them the value of the bill.

13. When a bill of exchange is accepted, and not punctually paid when due, a proteſt for non-payment is ſo far from releaſing the acceptor, as ſome have formerly erroneouſly thought, that it expoſes him to the payment of more than he was before liable; as by acceptance he only obliges himſelf to the diſcharge of the ſum mentioned in the bill, but under proteſt muſt pay all coſts, damages, intereſts, &c. and for which he becomes liable to an action on the caſe, as ſoon as the proteſt for non-payment hath been made, and he may be arreſted for the ſame accordingly.

14. In caſe of a remitter's failing, before he has paid the value, and the perſon to whom the bill is drawn gets advice of this occurrence before acceptance, and therefore refuſes to accept it; the bill on its returning proteſted, ſhall be paid, notwithſtanding, with all charges by the drawer, under proof from the poſſeſſor, that he negociated the ſaid bill, and paid a juſt value for it: But if the bill be directly forwarded to the perſon to whom it is made payable; and ſent him by the remitter in payment of a debt he was owing him; then it is dubious whether the drawer be obliged, as he has received no value, nor the poſſeſſor in any other ſhape made the ſame good. And though the drawer in ſuch a caſe is obliged to pay *extra* of what the remitter owes him for the value, the re-exchange and charges, yet the ſaid remitter ſtands indebted for no more than the bare import of the bill, nor can any thing more be recovered of him.

15. When a drawer acts ſimply for another's account without engaging as ſurety for the negociation, if the value by any caſualty is not received, the loſs will fall on him for whoſe account the bills were given, unleſs the drawer give the remitter a time for payment, without adviſing his principal thereof, or that he has neglected to demand the money in the cuſtomary time, or that the remitter was at the time of tranſacting the affair known to be inſolvent, or apparently declining in his circumſtances; in any of which, or ſimilar caſes, the drawer ſhall ſuffer the loſs, whether he received any benefit or not thereby, as it was occaſioned by his crediting the remitter.

16. If through the negligence of a negociator or poſſeſſor of a bill, the demanding acceptance has been omitted or poſtponed till the drawer has failed, and the perſon it is drawn on, being ignorant of what has happened, accepts the ſame when preſented, his acceptance ſhall oblige him to the payment, though procured after the drawer's inſolvency; but if the remitter or poſſeſſor hath neglected to demand acceptance, before the drawer's failure, and the perſon to whom it is directed hath advice thereof, he cannot be compelled to accept the draught, though previous to the knowledge of the drawer's misfortunes he hath acquainted him with his intention to honour his bill, and even afterwards confeſſes that he ſhould have done it, had it been preſented, and the acceptance demanded, before the advice of the drawer's failure reached him.

17. It is cuſtomary, in *London*, for the poſſeſſor of a bill to ſend it, on receipt, to the merchant's houſe, on whom it is drawn, for acceptance, and leave it there, if deſired, till the next day, except the poſt goes out the ſame day it is received, which often happens from the unavoidable irregularity of its arrival, in which caſe it ſhould be accepted, or proteſted. And in caſe a bill ſo left ſhould happen to be loſt, or miſlaid, either by the perſon on whom it is drawn, or by any of his ſervants to whom it was delivered, ſo that it cannot be returned to him who left it, neither accepted nor unaccepted, in this caſe he who loſt the bill, if he intended to accept, or if he had accepted it, ſhould give a note under his hand and ſeal for the payment of the ſum mentioned, and to the party directed in the bill, at the time limited, or to his order, upon delivery of the *ſecond*, if it come in time, or if not upon that note, which is in all reſpects and

caſes

caſes to have the law privilege of a bill of exchange, as it is but juſt and reaſonable that he who hath loſt another's *ſpecialty*, ſhould make it good by ſome means equivalent thereto; and in caſe of the ſaid note being refuſed, proteſt ſhould be immediately made for non-acceptance, and forwarded to the remitter, as that for non-payment ſhould be, though there is neither bill nor note to demand it on, if the contents of the loſt bill are not ſatisfied at the time limited for payment.

18. When any perſon has bills ſent him to procure their acceptance, with directions to return them or hold them at the orders of the ſeconds, &c. and the perſon to whom they are ſo ſent either forgets or neglects to demand acceptance, or if he ſuffers the party on whom they are drawn to delay their acceptance, and the drawers in the interim fail, he is certainly very blame-worthy for his careleſſneſs and diſregard of complying with his obligation, though this will not ſubject him to a payment of their value; but if he ſhould be urged and preſſed to procure acceptance and payment to a bill ſent him, and ſhould protract or refer the getting it done, and the acceptant, being ignorant of the drawer's circumſtances, declares he would have accepted it, had it been timely preſented, the perſon guilty of this neglect will be obliged to make good the loſs, that has happened to his correſpondent, purely through his omiſſion and careleſſneſs.

19. If an acceptor has heard that a drawer has failed, he ought not to accept any of his draughts afterwards, although he may, whilſt ignorant of the drawer's circumſtances, have promiſed honour to his bills; as his ſo doing may either prejudice himſelf, or a third perſon, which he ſhould carefully avoid, and not engage his firm without a ſufficient ſecurity againſt all claims and demands, that may be made either by the drawer himſelf, or any other in his right.

20. And the reaſons are equally good againſt accepting any bill from a bankrupt drawer, though it ſhould bear date before the time of his failure, and equal therein with the letter of advice, as fraudulent dealings are always to be feared in ſuch caſes, and conſequently to be guarded againſt; beſides it is not ſafe to accept a bill under theſe circumſtances, I mean in point of law; therefore every prudent man will be cautious to ſecure himſelf.

21. If any one be drawn upon, on account of a third perſon, and before accepting, has advice of the drawer's failing, he ought not to accept the draught, though he has promiſed the drawer he would, as his acceptance may be prejudicial to him; for if he has not effects in his hands, the perſon for whoſe account it is drawn, will naturally and reaſonably ſcruple the ſatisfying the value, or if he ſhould, it will be a detriment and loſs to him, if the other has not a ſufficiency in hand to anſwer the bills. And he ought more eſpecially to refuſe acceptance to any bills of a drawer who has failed, if the perſon, for whoſe account the ſame is drawn, adviſes of the drawer's inſolvency, or on ſuſpicion of its approach, hath forbidden the acceptant to accept any of the drawer's bills for his account, although he may have directed the acceptance of them before.

22. When any drawer fails, the acceptor is not obliged to give better ſecurity for payment, but the poſſeſſor muſt have patience till the bill falls due, before he has any demand on the acceptor; but then the acceptor is obliged to pay, though he accepted for the drawer's account, and without any effects in hand.

23. But if an acceptor, on a drawer's having failed, denies payment of a bill, the holder is not obliged to return it with proteſt to the place from whence it was drawn, as it is apparent that the re-exchanges and charges are not recoverable from the drawer, who muſt therefore, after proteſts made, be proceeded againſt without delay by attachment, &c.

24. If an acceptant fails, or abſents himſelf, the poſſeſſor is obliged, as ſoon as he has notice of the truth thereof, to get a proteſt made by a notary publick in due time, and to ſend the ſame, with the bill, to the remitter, that he may procure ſatisfaction from the drawer; and advice ſhould not only be immediately given to him, but even to the laſt indorſer, that every one concerned may be acquainted with the occurrence, and the drawer thereby impowered to order ſome other to pay his bill if he pleaſes, and thereby prevent the loſſes which re-exchanges bring with them.

25. If the holder of a bill, either through negligence, ignorance of the cuſtom, or of the acceptor's failure, or that becauſe the bill did not come to hand till after it was due, or from any other cauſe or motive, did not, or could not, have it proteſted by a notary publick, nor ſend it away either before, or after it was due, till probably after the laſt

reſpite

reſpite day; yet this negligence or ignorance doth not hinder the poſſeſſor's having redreſs on the drawer and indorſer, although the acceptant failed before it came due.

26. When an acceptor fails before the day of payment, and the bill is made payable to order, the poſſeſſor ſhould, as ſoon as poſſible, get a proteſt made, and ſent to the firſt remitter, though he muſt retain the bill till it falls due, that in caſe the drawer ſhould think proper to order the payment of his bill by any other, the poſſeſſor may be ready to receive it.

27. If when an acceptor has failed, any other offers to accept and pay the bill for the honour of the drawers or of any indorſer, the poſſeſſor is not obliged to admit the offer, if he has any reaſon to ſuſpect the circumſtances of the perſon who makes it; but if he has not, or if the ſaid perſon will give ſufficient ſecurity for his compliance, the holder cannot refuſe it.

28. Though it ſhould be remembered that it is not ſafe to accept a bill, whoſe firſt acceptor has failed, but under proteſt declarative of the motives to it, which proteſt ſhould be immediately ſent to the drawer, or to him for whoſe account it is accepted, with the notary's atteſtation of its being accepted for his honour.

29. Though the failure of an acceptor be certainly known, and even acknowledged by the drawer himſelf, yet this latter is not obliged to give any ſatisfaction or ſecurity to the remitter till he produces the proteſt; but if this is ſent without the bills, or the bills without that, or both bills and proteſt are returned together, and theſe, or either of them ſhewn to the drawer, he is obliged to give immediate ſatisfaction, or caution for the payment of re-exchange and charges; though it would be imprudent in a drawer to make reſtitution of the value received, or of the re-exchange and charges, only upon producing a proteſt for the acceptant's inſolvency; but upon producing this, and a requiſition thereto, he ſhould give ſecurity for the payment thereof, at the place where it is made payable, provided it can be done in time; if not, for the re-exchange, when the bill that was accepted by the inſolvent perſon ſhall be produced; and till the ſaid bill be produced, he need not reſtore nor repay any thing, without ſufficient ſecurity to deliver the bill, and a full diſcharge from all future demands; and to make reſtitution thereof with intereſt, in caſe the ſaid bill be paid to any perſon, *ſupra* proteſt. But if there is not time enough to order the bill's diſcharge at the place it was drawn on, the drawer muſt give the remitter ſecurity to pay it at *that* it was drawn from, as ſoon as it becomes due.

30. The drawer or indorſer is as much obliged to the poſſeſſor of a bill, proteſted for an acceptor's inſolvency, as they would be if the bill was proteſted for non-acceptance

31. When a perſon is drawn upon and remitted to, in bills payable to himſelf, and hath adviſed that he has accepted the draught, if he fails before the bills become due, the loſs muſt fall upon the drawer, or upon him for whoſe account he drew, and he will be obliged to make good the re-exchange and charges, though it be not proteſted in due form and courſe; but if he fails on the day of payment, or after, then the bill is conſidered as paid, and the loſs muſt be borne by him for whoſe account it was drawn, though it ſhould be proteſted within the days of reſpite.

32. When a bill is drawn for the account of a third perſon, and is accepted according to its tenor for his account, and he fails without making proviſion for its payment, the acceptor is obliged to diſcharge his accepted draught, without having any redreſs againſt the drawer.

33. If a perſon on whom a bill is drawn ſcruples the accepting of it for the account of him it is adviſed to be drawn for, or if through want of advice he is ignorant for whoſe account it is drawn, he may accept the ſame, *ſupra* proteſt, if he pleaſes, for the account and honour of the drawer.

34. When a bill is made payable to order, and indorſed by a ſubſtantial man, before acceptance be demanded, and the acceptor ſcruples to accept it for account of the drawer, or for the account of him it is drawn for, he may, if he thinks proper, do it *ſupra* proteſt, for the honour of the indorſer; and in this caſe, he muſt firſt have a formal proteſt made for non-acceptance, and ſhould ſend it without delay to the ſaid indorſer, for whoſe honour and account he hath accepted the bill.

35. An acceptance, *ſupra* proteſt, obliges the acceptor as abſolutely to the payment, as if no proteſt had intervened; it being indifferent to the poſſeſſor of a bill for whoſe account

account the ſame is accepted, and he hath his redreſs and remedy as ſufficiently as ever againſt all the indorſers and drawers, if the payment be not punctually made by the acceptor at the time of its falling due.

36. The poſſeſſor of a bill muſt be ſatisfied and content with an acceptance *ſupra* proteſt, if offered by a reſponſible perſon, as it is of no importance to him whether it is accepted ſimply or under a proteſt, as the acceptor pays the charges, except he had orders from the remitter, not to admit of ſuch an acceptance, in which caſe he ſhould and ought to proteſt, if a ſimple acceptance is refuſed.

37. When a bill is accepted, *ſupra* proteſt, and the holder is not ſatisfied therewith, but by the notary publick and witneſſes demands a ſimple acceptance, and, upon refuſal, makes a proteſt; the acceptor, if he continues reſolved not to accept ſimply and freely, ſhould renounce the acceptance he had made, and inſiſt that it be ſo inſerted in the proteſt; and be conſidered as null and void, as if it had never been done, otherwiſe he will act imprudently, and may ſuffer for it.

38. Neither the poſſeſſor of a bill, nor he that may demand acceptance, nor any third perſon whatſoever, may accept a bill of exchange previous to a refuſal from him it is drawn on, or that he cannot be found, and hath left no order for the acceptance; in any of which caſes, either the poſſeſſor himſelf, or any other, may accept it, under proteſt, after cauſing it to be proteſted for non-acceptance; and the method of accepting *ſupra* proteſt is as follows, *viz.* the acceptor muſt perſonally appear before a notary publick with witneſſes, whether the ſame that proteſted the bill or not is of no importance, and declare that he doth accept ſuch proteſted bill in honour of the drawer, or indorſer, &c. and that he will ſatisfy the ſame at the appointed time; and then he muſt ſubſcribe the bill with his own hand, thus, *accepted ſupra proteſt, in honour of* I. B. &c.

39. An acceptance, *ſupra* proteſt, may be ſo worded, that though it be intended for the honour of the drawer, yet it may equally oblige the indorſer, and in ſuch caſe it muſt be ſent to the latter; but ſuch an acceptance tends rather to the diſcredit than honour of the drawer.

40. When the poſſeſſor of a bill hath admitted of a third perſon's acceptance, *ſupra* proteſt, in honour of the drawer, then the drawer is freed from any obligation to give a further ſatisfaction to the remitter; but if the acceptance be made in honour of the indorſer only, the bill is abſolutely proteſted in reſpect to the drawer, and he is as much obliged to give ſatisfaction, either to the indorſer, for whoſe honour it was accepted, or to the remitter, as if the acceptance, under proteſt, had never been made.

41. If a bill be proteſted for non-acceptance, and after being accepted, *ſupra* proteſt, by a third perſon, the intended acceptant, on receiving freſh advices and orders, determines to accept and pay it: the acceptor, under proteſt, may ſuffer it, though the poſſeſſor cannot be obliged to free him from his acceptance; and in caſe the two acceptors agree, he that was originally deſigned ſuch, is obliged to pay him who has accepted *ſupra* proteſt, his commiſſion, charges, &c. as it was by his acceptance that the bill was prevented from being returned proteſted.

42. Any man that will, may, *ſupra* proteſt, accept a proteſted bill for the honour of the drawer, or any particular drawer, that was before accepted, *ſupra* proteſt, in honour alſo of ſome one particular, but later indorſer, and the firſt acceptor is obliged to allow of the ſame, and yet remain obliged for his firſt acceptance; but the laſt acceptor is obliged to pay and allow proviſion and charges to the firſt, for the reaſons aſſigned in the preceding caſe.

43. He that accepts a bill *ſupra* proteſt, puts himſelf abſolutely in the ſtead of the firſt deſigned acceptor, and is obliged to make the payment without any exception; and the poſſeſſor hath the ſame right in law againſt ſuch an acceptor, as he would have had againſt the firſt intended one, if he had accepted.

44. When any one accepts a bill *ſupra* proteſt, he may lawfully demand a recompence for the credit given him, for whoſe honour he accepted it, at leaſt his commiſſion, poſtage, and other charges; and in caſe he ſhould be forced to take his re-imburſement by re-draughts on the perſons for whoſe account he accepted and pays, his bill ought to meet with a juſt and ready compliance, beſides a grateful acknowledgement of the favour.

45. No

45. No one ſhould accept a bill under proteſt for the drawer's honour, till he had firſt learned the reaſons from the intended acceptor, for his ſuffering it to be proteſted; but if the acceptance be in honour of an indorſer, ſuch an enquiry is needleſs.

46. Though the drawer of a bill, under proteſt for non-acceptance, and his hand-writing, be ever ſo well known, yet every one ſhould be cautious in accepting it *ſupra* proteſt for his honour, provided the perſon for whoſe account it was drawn, be unknown, and cannot be found.

47. Any one accepting a bill *ſupra* proteſt, either for the honour of the drawer or an indorſer, though it be done without their orders, or knowledge, yet hath his redreſs and remedy on the perſon for whoſe honour he accepted it, who is obliged to indemnify him, as if he had acted entirely by his directions.

48. If the acceptor of a bill, under proteſt, for the honour of a drawer or indorſer, receive his approbation of the acceptance made, the acceptor may freely pay the bill, without any proteſt for non-payment; but if the perſon, for whoſe honour the bill was accepted, returns no anſwer to the advice, or replies with a diſapproval thereof, unthankfully remarking that it was done without orders; in this caſe the acceptor, *ſupra* proteſt, muſt cauſe a formal one to be drawn up for non-payment, againſt him to whom the bill was directed, and on his continuing to refuſe payment, and he that has accepted it, is obliged to do it for him; he ſhould engage the poſſeſſor to transfer all his action, right, and law of the bill to him; for though this is not abſolutely neceſſary, yet it will corroborate his demands, when he comes to have recourſe againſt the perſon for whoſe honour he accepted it (whether drawer or indorſer) or any of the former indorſers.

49. He that accepts a bill in honour of the drawer, hath no remedy againſt any of the indorſers, becauſe he obligeth himſelf only for the drawer; and he that accepts for the honour of an indorſer, can have no advantage from any one, ſubſequent to him for whoſe honour he accepted; but he and all that were before him, the drawer included, are obliged to make the acceptor ſatisfaction.

50. When a bill is proteſted for non-payment, any man may pay the ſame, under proteſt, for the drawer's or indorſer's honour, even he that made, or he that ſuffered the proteſt.

51. A man after having freely and willingly accepted a bill, cannot ſatisfy the ſame under proteſt, in honour of an indorſer, becauſe he as acceptor, is already obliged to him; but an intended acceptor, not having yet accepted the bills, may diſcharge them for the honour of the indorſer or drawer, as if he was a third perſon unconcerned.

52. When a perſon has bills paſſed on him for the drawer's account, who, having made no proviſion for the payment thereof, gives the acceptor room to fear he ſhall have ſome difficulty in obtaining a re-imburſement; in ſuch caſe, this latter may ſuffer them to be proteſted when due, and afterwards either pay them himſelf, or ſome other for him, under proteſt cauſing the right and title to be transferred to him, to enable him to proſecute the drawer in caſe of need, or by this means the more eaſily to prevail on him to re-fund the value he received, when probably it would be difficult to perſuade him to re-imburſe what the acceptor has paid for him.

53. No man muſt pay a bill under proteſt for non-payment, till he has declared before a notary publick, for whoſe honour he diſcharges it, whereof the notary muſt give an account to the parties concerned, either jointly with the proteſt, or in a ſeparate inſtrument, or act.

54. He that pays a bill *ſupra* proteſt, immediately ſucceeds the poſſeſſor in the right and title thereof, though there be no formal transfer made, nor no *ceſſio actionis* from the holder to the payer; yet to prevent all diſputes, it may be more adviſeable, eſpecially in ſome caſes, to have this *ceſſion* made in form, and to this the poſſeſſor is obliged whenever it is demanded of him.

55. The poſſeſſor of a bill, proteſted for non-payment, is not obliged to admit of its diſcharge from a third perſon, *ſupra* proteſt, either in honour of the drawer or any indorſer, unleſs he declare and prove that the honour of that bill was particularly recommended to him; in which caſe, the holder is abſolutely obliged to admit the payment from him, as if the intended acceptor had diſcharged it.

56. But if the proteſted bill be indorſed by the poſſeſſor's correſpondent, and was remitted by him, then the poſſeſſor if he acts circumſpectly will not admit of any payment

ment in honour of the indorſements, but under the expreſs condition that the payer ſhall have no redreſs or remedy againſt the ſaid correſpondent.

57. He that diſcharges a bill proteſted for non-payment, in honour of the drawer, hath no remedy againſt the indorſers; though he that honours a bill, proteſted for non-payment, for an indorſer, hath his remedy not only againſt the ſaid indorſer, but againſt all that were before him, including the drawer, though he hath no action, law, or right againſt the indorſers that follow him, for whoſe account the payer was willing to diſcharge the bill; as has been mentioned about accepting bills, *Sect.* 49.

58 When ſeveral perſons offer to honour a bill proteſted for non-payment, he that proffers to do it in honour of the drawer ſhould firſt be admitted, and then, he that intends the ſame for the earlieſt indorſer.

59. When a bill is paid under proteſt, in honour of an indorſer, and the acceptor adviſeth the payer that there is another, or that he himſelf, will diſcharge it for the honour of an earlier indorſer, or of the drawer, and this before he that paid hath re-imburſed himſelf by re-drawing, then he is obliged to admit of it from the ſecond, and to transfer his right to him, though the ſecond payer will be obliged to refund to the firſt, not only his charges, but half commiſſion alſo.

60. Men ſhould be very circumſpect and cautious in accepting or paying bills for the honour of the drawers, and ſtill more ſo, when they do it for the honour of an indorſer; and ought to be very well acquainted with the character and circumſtances of the perſon for whom they engage their firm, or pay their money; and this precaution is more eſpecially to be obſerved, when a ſolvent acceptor ſuffers a proteſt for non-payment, and his reaſons for ſo doing are ſtrictly to be enquired into, previous to a payment for the honour of any one concerned, as they may be ſuch as might diſſuade any other from paying them *ſupra* proteſt, though if they are intirely ſatisfied of the ability of the acceptor, they may with leſs fear pay the bill, as he is obliged for its diſcharge, in caſe the drawer or indorſers refuſe.

61. If the proteſt for non-payment be ſent away, it is unadviſeable to offer payment under proteſt, though the bill be ſtill retained, unleſs the poſſeſſor will give ſufficient ſecurity to make reſtitution, in caſe the drawer or indorſer ſhould have re-paid the value and charges, or otherwiſe agreed with the remitters.

62. A more than ordinary circumſpection is likewiſe required in the payment of bills, under proteſt, that are made payable to order, and at ſome days ſight, when there hath been any neglect in the procuring acceptance; and, above all, men ſhould be fearful to meddle with bills that were not duly and timely proteſted.

63. When a bill is paid, *ſupra* proteſt, in honour of the drawer or indorſer, the payer uſually, if he has no effects in his hands, re-draws the ſame directly on him for whoſe account he paid it, with the addition to the ſum mentioned in the bill, of the charges of proteſt, brokerage, poſtage, and commiſſion.

64. And when he that pays under proteſt hath re-valued for his advance, he ought, with his advice of his draughts, to ſend the proteſt with the proteſted, and by him diſcharged, bills of exchange, jointly with the inſtrument of his tendered payment and its acquittance, to his correſpondent, that they may be ſhewn to the perſon, for whoſe honour he paid, at the time of demanding acceptance of his bills for re-imburſement, which ought in gratitude to be punctually complied with: though if it ſhould not, and the perſon drawn on refuſes acceptance and payment, he may be compelled thereto, as well as to defray all the drawer's charges and damages, the right being now in him, either by or without a transfer of it from the firſt poſſeſſor, as has been before explained.

65. If a drawer make any diſpute, and alledge that his bill was accepted, and therefore the remitter muſt ſeek his redreſs from the acceptor, &c. he ſhould be informed that he muſt primarily be applied to before it can be ſued for from the acceptor; and if a drawer has any ſuſpicion that his bill, though accepted, will not be paid, he ſhould recommend the care of it to ſome other perſon for his own credit, who may afterwards have recourſe againſt the acceptor, as this latter's refuſing payment expoſes him to immediate execution.

66. In caſe of a perſon's refuſing payment of his accepted bills when due, they ought to be proteſted, and ſent with the proteſt to the remitter or drawer, which of the two it

was

was that forwarded them, except they ſhould order their correſpondent to detain the bill, with a proſpect of obtaining their diſcharge from the acceptor.

67. The poſſeſſor of an indorſed accepted bill, proteſted for non-payment, and not diſcharged *ſupra* proteſt, hath his redreſs on the drawer and all the indorſers; and therefore it is uſual for the poſſeſſor of ſuch a bill to re-draw for its value, &c. on him from whom he received it, whether he be the firſt remitter, or any other indorſer; but if he is not to be found, or has failed, or if it is more for the poſſeſſor's conveniency, or to comply with the requeſt of a later indorſer, he may draw upon ſome earlier indorſer, and demand of him or the drawer, reſtitution of the value and charges, and, in caſe of refuſal, compel him to it; ſtill, however, the perſon from whom he received, or with whom he negociated the bill, is obliged to refund, and he again hath his redreſs on the acceptor, drawer, or any other earlier indorſer.

68. The poſſeſſor of ſuch a bill muſt not directly demand reſtitution from the drawer, before he has given notice of the non-payment and proteſt to the indorſers, leſt he loſe his redreſs on them; and he ſhould, as well in caſe of proteſt for non-acceptance as for non-payment, adviſe the remitter thereof without delay, and ſend him a copy of the proteſt, that he may get ſecurity from the drawer.

69. No bills of exchange, proteſted or to be proteſted, can be attached in the notary's hands, except only when an acceptor can demonſtrate that he hath fully paid their contents, and in this caſe the attachment will lie; otherwiſe it is of no force or validity; and the notary may, nay muſt when demanded, reſtore the bill and proteſt to him from whom he received it, to act therewith as he ſhall judge convenient.

70. No perſon can be compelled to pay a bill which has not been accepted; nor the drawer or indorſer to the making reſtitution, unleſs the bill be returned with proteſt for non-payment; but if it is, and the proteſt is in all circumſtances rightly made, he that gave or negociated the bill muſt make immediate and punctual ſatisfaction for the value, re-exchange, commiſſion, brokerage, poſtage, and proteſt.

71. The drawer of a bill payable to order, is no further obliged, though the proteſted bill was indorſed in ſeveral places, and returned the ſame ways, than for payment of the re-draught made from the place where the bill was to be diſcharged directly to that where it was drawn, and at ſuch a courſe of exchange as then governed; and the indorſers are likewiſe no further obliged than for the re-valuing from the place intended for its payment directly to that where it was reſpectively indorſed by them.

72. When a bill is in the ſame place ſucceſſively indorſed by ſeveral perſons, and is returned by proteſt to the laſt indorſer, he is obliged inſtantly to make ſatisfaction, either by himſelf or by ſome other indorſer before him or for him; and if he pay, and ſatisfy it himſelf, he is not then to demand proviſion or charges of the other indorſers or drawer in the ſame place, more than what he has actually paid.

73. The remitter or poſſeſſor of a bill proteſted for non-payment, is not preciſely obliged to ſolicit reſtitution from the drawer or indorſer, if he had rather ſeek his redreſs from the acceptor; and on the contrary he need not regard the acceptor, if he prefers ſeeking ſatisfaction from the drawer or indorſer, nor is he obliged to allow them any time for the payment, but may, if it be not punctually complied with, proceed againſt which of them he pleaſes.

74. No drawer or indorſer is obliged to make reſtitution on ſight of the proteſt alone, nor on ſight of the proteſt and the unaccepted bill, when one of them hath been accepted; but he is obliged to give a ſatisfactory ſecurity to the remitter on his producing only the proteſt, and to make payment when this and the accepted bill are preſented together.

75. If a perſon who has accepted a bill, refuſes payment when it is due, and the bill, on being returned with proteſt that the drawer may ſatisfy it, meets with a refuſal from him alſo, and is ſent back again to the poſſeſſor, this latter in ſuch caſe has as much right and law againſt the acceptor as againſt the drawer, and may force either of them to a compliance.

76. Though the poſſeſſor of an accepted bill hath no redreſs againſt the drawer, if he omits to proteſt it for non-payment, till the days of grace are expired, yet if the drawer be ſtill in credit, he muſt ſend to him with the proteſt, as till this is done, and they are returned, he cannot compel the acceptor to diſcharge it.

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77. When a bill is made payable for the drawer's own account, and is not diſcharged when due, but proteſted for non-payment, the poſſeſſor need not return it on the drawer, but may inſtantly compel him to make ſatisfaction whenever he is found.

78. The acceptor of an indorſed bill, proteſted for non-payment, cannot be proceeded againſt by arreſt or attachment, though any one or all the indorſers refuſe to make ſatisfaction, unleſs the drawer alſo refuſe to do it, and this be proved by good evidence; and the acceptor of a bill returned to the drawer with proteſt for non-payment, and ſent back undiſcharged by him, is only obliged to pay the exchange and re-exchange, proviſions, and poſtage, without other charges.

79. And the exchange is reckoned according to the courſe at ſight, at that time and place where the proteſt is made, to the place where the payment ſhould be made by the drawer; but if it is not complied with there, then the ſum is again increaſed, by the commiſſion and poſtage being added, and the courſe is now reckoned upon the whole ſum, according as it ſhall govern at that time and place upon ſight, to the place where the bill is to be paid, and the acceptor is obliged to pay the re-exchange and all the charges, although the parcel was not effectually negociated and re-drawn, *i. e.* re-change, proviſion, and poſtage muſt be twice paid, &c. as proviſion twice for the exchange and re-exchange; the charges being only for poſtage, and proteſts, unleſs the acceptor, by delays and excuſes, forces the poſſeſſor upon ſome neceſſary charges to recover, which the acceptor is obliged to pay; but no extraordinary ones, ſuch as travelling, &c. will be allowed.

80. And if the acceptor under the afore-mentioned circumſtances refuſe immediate payment to the returned bill, a legal intereſt may be charged him, from the day that the bill was due to the time of its diſcharge; though he ſhall not be obliged to make good any other loſſes or damage than thoſe before-mentioned, notwithſtanding the expreſſions uſed in the proteſt, as theſe are not to be conſtrued as obligatory on the acceptor to ſatisfy any loſs or damage which the poſſeſſor may pretend he has ſuffered from a want of punctual payment, and by this means fruſtrating his deſigns of ſome beneficial engagement, or a loſs of a convenient opportunity for advantageouſly employing the ſum detained.

81. When a drawer is not of an eſtabliſhed credit in the commerce of the place he is ſettled at, it is common for ſome merchant, who inclines to forward and protect, at firſt to indorſe his bills, till time and opportunity have rendered him and his dealings better known; but if any ſuch friend excuſes to indorſe his bills, and yet has a mind to ſerve him, it is frequent on ſuch occaſions for that friend to ſubſcribe the ſecond or third bill, which is done by the ſole ſetting his name under that of the drawer, without adding a ſingle ſyllable thereto, as this doth as fully and amply oblige him as it does the drawer, though the obligation only extends to the bill ſo ſubſcribed, for which the underwriter is anſwerable to the remitter, or any other this latter negociates it with; but if the remitter keeps the ſubſcribed bill himſelf, and the poſſeſſor of the other two unſubſcribed would ſeek any redreſs againſt the ſecurity, he cannot for want of the bill that is ſubſcribed; but as ſuch negociations are only practiſed for the ſafety and ſatisfaction of the deliverer, without an intention in any ſhape to diſcredit the drawer, they are uſually concealed, and the ſubſcribed bill ſeldom ſent away.

82. And when ſuch ſubſcribed bills are ſatisfied, they ſhould be returned to the principal drawer, as he in the firſt bill acknowledges to have received the value, and the remitter would be very imprudent if he paid it to the ſubſcriber though he contracted with him, and regards his firm more than that of the drawer's; but the ſubſcribed ſhould take care to enquire of the remitter or poſſeſſor, whether the bill was punctually complied with when due, that he may for his ſecurity have that which bears his firm cancelled.

83. Exchange is made in the name, and for the account of a third perſon, when any one acts therein by the order, full power and authority of another, which is commonly called *procuration*; and theſe bills may be drawn, ſubſcribed, indorſed, accepted, and negociated, not in the name or for the account of the manager or tranſacter of any or all of theſe branches of remittances, but in the name and for the account of the perſon who authorized him.

84. And as ſuch an unlimited power, if abuſed, may be of the moſt ill conſequences to the giver of it, who certainly puts his welfare and fortune in his *procurators*

hands, it ought not lightly to be granted, nor till the moſt ſedate reflections and thorough knowledge of the perſon will juſtify the ſtep, and bring it within the limits of prudence; therefore a diſcreet man will not hazard his ſubſtance by ſuch a ſubſtitution, except through mere neceſſity, and then will act with all the circumſpection poſſible in his choice; and when he has paſſed his nomination, and authentically ſubſtituted his agent, he muſt adviſe thoſe correſpondents on whom his procurator may occaſionally want to draw, &c. with his having given ſuch a power, and deſire them to honour the firm of his ſubſtitute, whenever made uſe of for his account.

85. And he that by ſuch a procuration does either negociate, draw, indorſe, ſubſcribe, or accept bills of exchange, by ſubſcribing his own name and quality, that is, the attorney of his employer, does thereby as effectually oblige his principal as if he himſelf affirmed, whilſt the procurator is not in the leaſt obligated; but if any one, under the pretence of having a full power from a perſon of credit, tranſacts any buſineſs for his own account, he is not only obliged to perform all that he hath negociated in the name of another perſon, but is likewiſe liable to be puniſhed ſeverely for the deceit; and ſuch a pretence no way obliges the perſon whoſe name is made uſe of therein.

86. It will therefore be prudent in every remitter or poſſeſſor of bills to refuſe any drawings or acceptance by the wife, ſervant, &c. of thoſe they pretend to repreſent, unleſs they firſt produce the power they ſay they act under, and this be in every reſpect full and ſatisfactory, and neither antiquated, recalled, or cancelled; and it is aſſerted by *Marius* and others, that a merchant's letter to his wife, friend, ſervant, or any other, to accept bills of exchange, is not ſufficient without a power of attorney in form; tho' if there ſhould be no ſuch inſtrument made to either of the aforementioned perſons, yet if either of them have formerly in the principal's abſence uſually accepted his bills, and he approved thereof at his return, I believe, on proof of this, it would always be conſtrued as his intention, and be as valid and binding as a legal and formal inſtrument.

87. In negociations of bills, the procurator ſhould, before he concludes any, adviſe the perſon treating with him of the quality in which he acts, that he may be ſatisfied of the validity of his deputations; for if without mentioning any thing thereof previous to his contracting, either by himſelf or a broker, the other party is not obliged to ſtand to the agreement, or pay him any money if he has acted as a drawer. but may refuſe to have any thing to do with him; though on the contrary, the poſſeſſor of a bill muſt admit the acceptance of a procurator, provided his letter of attorney be general, or expreſsly declaring that all bills by him accepted, are for account of the principal, or limited only to the acceptance of thoſe bills that the poſſeſſor has; but, if the procuration be not clear and expreſs in theſe particulars, then the holder is not obliged to admit the acceptance of one whoſe power to perform it is doubtful or inſufficient.

88. When bills of exchange are drawn on one place, and made payable in another, the intention of ſuch a draught ſhould be mentioned at the time of agreement, otherwiſe it is not binding; and when bills are drawn in this manner, it is cuſtomary for the acceptor to mention the houſe they are to be paid at. *As for example: A. B.* of *London* draws 500 dollars on *C. D.* of *Bilboa*, payable at *Madrid*, which the remitter ſends to his correſpondent there, and he to his at *Bilboa*, where being preſented to the ſaid *C. D.* he accepts it to be paid by *E. F.* [or in the houſe of *E. F.*] of *Madrid*, and takes care to furniſh the neceſſary fund in time for its diſcharge, otherwiſe the bill will be proteſted for non-payment in *Madrid*, as *E. F.* lies under no obligation to pay it, if he has not effects of the acceptor's in his hands, neither is he obliged to declare whether he will pay it or not, before it is due.

89. It is ſometimes cuſtomary in caſes like the above, for the remitter, if he has no correſpondent at the place the bill is drawn on, to deſire the drawer to ſend the firſt for acceptance, and to return it accepted to him, or elſewhere as he ſhall direct, which the drawer cannot well refuſe, though he is not ſtrictly obliged to a compliance; however when once conſented to, and he does not return the bill accepted in a convenient time to the remitter, or forward it according to his order, this latter ſhould ſend the ſecond bill to ſome other perſon to procure acceptance, as he cannot oblige the drawer to give him any further ſatisfaction, in caſe this has not been done to the firſt, and if refuſed, to enter a proteſt.

90. If the acceptor of a bill does not live in the place where it is payable, as in the foregoing caſes, and in order to diſcharge it, remits the holder other bills due at the

ſame

ſame time as his, the ſaid holder is not obliged to admit them in payment, and if he conſents to it may juſtly demand his commiſſion on them, as he has a double trouble in the recovery of his money; and on the contrary, if the poſſeſſor deſires the acceptor to ſend him the value of the bill in others, or in ſpecie, the acceptor is under no obligation to comply, unleſs he has an allowance of a proviſion for his pains.

91. If the perſon to whom the bill is addreſſed will not accept it, a proteſt muſt be entered againſt him for non-acceptance, but that for non-payment is properly made, as before obſerved, at the place where the bill is payable; and though the poſſeſſor is under no obligation to ſeek elſewhere for payment, yet he may, in caſe of its not being punctually diſcharged, proceed againſt the acceptor wherever he finds him.

92. Beſides the afore-mentioned method of drawing on one place and paying in another, there is yet a different manner of executing ſuch negociations, as when bills are not made payable or remitted to the place directly where the money is, but to ſome other place, from whence the value is to be redrawn or remitted to the place where the payment muſt be made. *As for example:* A perſon has money lying at *London*, which he would willingly have at *Dantzick*, but as the *Dantzicker* cannot draw directly on *London*, he firſt paſſes his bill on *Hamburgh* or *Amſterdam*, and orders his correſpondent there, to re-imburſe himſelf on *London*; and the motives to this ſort of exchanging are either, firſt, becauſe there is no courſe ſettled directly; or elſe, ſecondly, where there is, it may be more advantageous not to make uſe of it, but to negociate otherwiſe.

93. When any one draws by commiſſion, it muſt be either for the account of him on whom he draws, or elſe for that of a third perſon; if for the former, the drawer ſhould punctually adviſe him of the ſum drawn, and diſtinctly in how many bills, what date, to whom, and when payable, from whom the value, and at what exchange, and indeed the ſame exactneſs ſhould be always obſerved in regard to adviſing whenever bills are drawn, and no draughts ſhould be paſſed for the account of a third perſon without ſpecial order from him; and it is cuſtomary on ſuch occaſions for the acceptor to adviſe that he will honour ſuch draughts, whenever they appear, previous to the drawer's making them; and the drawer on his part ſhould give punctual advice both to his principal and the acceptor, whenever he executes his commiſſion; and it is uſual in ſuch caſes for the drawer to mention in the bill for whom he draws, by concluding it with theſe words, *and place it to the account of* A. B. *as per advice from*, naming the perſon, or the two initial letters of his name, which may prevent and obviate an exception ſometimes made by an acceptor, that he did not accept nor ſatisfy the bills for ſuch an account, but on the drawer's only.

94. Bills may be, and many times are, drawn upon a third perſon's account, who yet remains *incog.* to the acceptor. *As for example: A. B.* is ſtraitened for caſh, and *C. D.* his friend has none to ſpare him, yet willing to ſerve him, he makes his credit ſupply what his purſe denies, and paſſes his bill on *E. F.* of *Amſterdam* for the ſum that *A. B.* wants, with orders to re-draw the ſame on him [*C. D.*] which *A. B.* pays in due time. And ſometimes bills are drawn for account of a third, by order of a fourth, *viz. A. B.* of *Antwerp* receives orders from *C. D.* of *Madrid*, to draw for his account on *E. F.* of *Hamburgh*, but *A. B.* finding no opportunity of effecting it, directs *G. H.* of *Amſterdam* to value for the ſum ordered on *Hamburgh* for the account of *C. D.* of *Madrid*, and to remit it afterwards to him the ſaid *A. B.* Or elſe *A.* draws on *B.* with orders to re-imburſe himſelf with draughts on *C.* for the account of *D.* but *B.* ſhould refuſe ſuch a commiſſion, unleſs *A.* be his ſecurity; and when he draws on *C.* he ought to adviſe him that he draws by order of *A.* for the account of *D.* and alſo give advice to *A.* with all the particulars of the negociation, though it is unneceſſary to correſpond with *D.* about it, this being *A*'s obligation.

95. He that hath orders to draw on one place, and remit to another, or *vice verſa*, for the account of a third perſon, ſhould not remit before he knows he can draw, nor draw before he knows he can remit, as by the doing one he may be in diſburſe, and by the other have his principal's caſh lie by longer than may be pleaſing; and when he hath an opportunity to do both, he ſhould, before concluding, make his calculation whether he can execute his commiſſion within limits, if limited, according to the terms and exchanges offered him.

96. When a remitter by commiſſion hath ſent his bill to a third perſon by order of his principal, and in his letter of advice hath clearly expreſſed for whoſe account it is,

then

then neither he nor his employer can alter or recall the ſame, to the prejudice of him to whom the remittances are made.

97. If a remitter in commiſſion ſtands *del credere*, as creditor, for the remittances, he acts indiſcreetly if he has the bills made payable to himſelf or order that he may indorſe them; for though this is frequently practiſed by the chief bankers and exchangers, with a view to conceal from the drawer the perſon to whom they remit it, it does not take off from the imprudence of the action, as the following reaſon will evince, *viz.*

1ſt, The indorſer may be forgotten, and from this omiſſion may ariſe endleſs diſputes and conteſts; 2dly, the remitter by this means makes himſelf liable not only to anſwer all damages, &c. to his principal, but alſo to every poſſeſſor and indorſer of the bill after him; for,

3dly, By indorſing the bill, he makes it his own bill, and obliges himſelf on the account of his principal, not only for the value by him received, but for all other charges and re-exchanges.

98. And though a remitter by commiſſion does not ſtand *del credere*, he acts with equal imprudence, in having the bills, as aforeſaid, made payable to himſelf or order, and then indorſing them, for thereby he effectually engages himſelf to ſtand *del credere* without reaping any advantage therefrom.

99. Any remitter on commiſſion that ſtands *del credere*, may, upon the return of a bill for non acceptance, contract with the drawer for the re-exchange and charges, and on his receiving ſatisfaction, not only be compelled to remit, if he hath not indorſed the bill, the ſame value for a timely diſcharge, but alſo to give his principal the advance of the re-exchange, &c. but in caſe he hath indorſed the bill, he may abſolutely refuſe to give away thoſe advantages, as by his indorſement he made it his own bill, and he, as well as any other drawer or indorſer, may have the bill diſcharged when due, and appropriate the gains of re-exchange to himſelf.

100. A remitter by commiſſion that ſtands *del credere* is not obliged to make good to his principal any more than the value he paid for the bill, in caſe it ſhould be returned with proteſt, and the drawer is not able to make ſatisfaction, as the re-exchange and charges muſt be the principal's loſs, if they are loſt, becauſe the remitter had proviſion only on the value paid; but if he obtain ſatisfaction from the drawer for the re-exchange and charges, he is obliged to make the ſame good to his principal, though the commiſſions he receives from the drawer are his own, unleſs the juſt ſum, with the proviſion and charges, be effectually re-drawn on him; and in this caſe, he may place a commiſſion to his principal's account, for the trouble of accepting and paying the bill.

101. And a remitter by commiſſion with *del credere* is obliged, on a bill's being returned with proteſt for non-payment, immediately to make good its value, or to ſuffer it to be drawn on him, becauſe his ſtanding *del credere* obliges him not only for the drawer's ſufficiency, but for its punctual diſcharge; though in this caſe the intereſt, re-exchange, &c. is all for his own benefit, notwithſtanding the drawer, incapable to make preſent payment, ſhould yet give ſecurity to make a future ſatisfaction; and the remitter if he gives orders for the payment of the bill, may charge his employer with what he effectually pays more than the bill was for, or what his diſburſements exceed the value he paid, provided he remits the principal to recover the loſs and charges he ſuſtains from the drawer.

102. When a remitter in commiſſion, ſtanding ſecurity, has made bills payable to the order of his principal, or to any other perſon, that are returned proteſted, and they have been indorſed ſeveral times in different places, and conſequently the advice of the proteſt muſt be for a conſiderable time retarded in reaching the remitter, he is notwithſtanding obliged to make good to his principal the value by him paid, and that though the drawer was for a conſiderable time in credit after the advice thereof might have come to his hands, if it had been ſent directly. And in caſe any one under the above circumſtances executes his commiſſion on his own bills, and they return proteſted, he is then obliged, both as drawer and ſecurity, to make good to his principal the re-exchange and charges, as if he had not been the drawer himſelf, but a ſtranger.

103. If any one remitting by commiſſion with *del credere*, makes the bills for the account of him to whom he remits, then the riſk of ſtanding ſecurity finiſhes with the day

day of payment: ſo that in caſe the acceptor, ſuppoſing him to be the perſon to whom the remittance was made, ſhould fail the very next day after the bills became due, and though a formal proteſt for non-payment be not entered, the loſs will fall on the principal, and not on him that remits by commiſſion; but if the acceptor fails before the day of payment, or does timely proteſt againſt himſelf for non-payment, then the loſs is the remitter's, becauſe he alſo is the drawer to him, for whoſe account the draught was made.

104. When a remitter by commiſſion hath orders from his employer to make remittances to ſome of his correſpondents, that he ſuppoſes to be ſubſtantial men, under the remitter's ſecurity, and there to wait the principal's directions, if the ſaid remitter adviſe him that he has complied with his orders, and mentions to whom he remitted, and the exact ſums he paid, he is not obliged to his principal, though the *remitted* ſhould fail, becauſe the *del credere* hath only reſpect to the goodneſs of the bills, and not to the ſolvency of him to whom they are ſent; as the money, from the moment of his receiving it, was at the order and diſpoſal of the principal, and this latter, if he truſted the other with it, it was a matter of choice, and at his own riſk.

105. If a factor has orders to draw on one place, and remit to another with his *del credere*, and cannot recover for his draughts, he muſt ſuffer the loſs, as his ſecurity is for the whole negociation, and not for the remittances only; and if the bills a remitter takes be returned with proteſt, and he cannot procure immediate ſatisfaction from the drawer, he may charge him an intereſt on the money advanced, although he then gives him ſecurity for the payment.

106. It is the duty of every one drawn on by commiſſion to adviſe the drawer, immediately on hearing of the draught, whether he will accept it or not, on the conditions, and for the account of him for whom it was made; and if the bill be for the account of a third perſon, the acceptor muſt give him advice alſo of the drawer and ſum paſſed on him for his account, and add when it falls due, and whether he will honour it or not.

107. He that is drawn upon for the account of a third perſon, from whom he has received no orders for accepting, nor is in caſh for him, neither hath directions to revalue on the principal, acts prudently if he ſuffers the bill to be proteſted for non-acceptance, unleſs he knows the drawer to be a reſponſible man, and this inclines him to accept, *ſupra* proteſt, for his honour, which he may do if he pleaſes, and oblige the drawer afterwards to make him ſatisfaction; but in this caſe, he ought immediately to adviſe the drawer of ſuch his acceptance under proteſt.

108. He that is drawn on for the drawer's account, or that of a third perſon, and ſcruples to accept it for the one or the other, either freely or under proteſt, may accept the ſame in honour of any indorſer, *ſupra* proteſt, that he thinks proper to truſt, and is then obliged to give the drawer, and the perſon for whoſe account it is, and alſo the indorſer for whoſe honour he accepts, advice thereof; and to ſend the proteſt, with the inſtrument of acceptance, to the indorſer, that he may uſe it againſt the drawer.

109. When the acceptor hath accepted a bill, *ſupra* proteſt, in honour of the drawer or any indorſer, for want of advice, order, or proviſion, from him for whoſe account the bill is drawn, and he afterwards receives both orders and effects, he is then obliged to free the drawer and indorſer from their obligations, and to adviſe them that he will pay the draught for his account for whoſe it was drawn, and that he therefore diſcharges them.

110. If any one accepts a bill with the drawer's obligation, he muſt at the day of payment adviſe the drawer, whether he for whoſe account the bill was drawn, had made proviſion for it, or otherwiſe diſpoſed its payment, and if this was done, he in conſequence diſcharges the drawer from his obligation.

111. When any one is drawn on for the account of a third, by another with whom the acceptor never had any correſpondence, and conſequently muſt be ignorant of his firm, he ought to be deliberate in his acceptance, though he has orders from his principal to honour ſuch draughts, and ſhould rather wait for the drawer's advice, that he may compare his letter and bill, than be precipitate in his acceptance.

112. He that verbally or by letter has promiſed to accept any bills drawn on him for a third perſon's account, and he to whom the promiſe was made, does, in conſequence thereof, give the third perſon credit, relying on a punctual compliance; in this caſe,

he

he that has engaged his word is obliged to fulfil it, or be anſwerable for all damages that ſhall proceed from a breach thereof, and though he cannot by law be compelled to an immediate ſatisfaction, a regular proceſs will oblige him to pay at laſt.

113. If a factor has orders from his principal to accept a certain ſum drawn by a third for his, the principal's account at uſance, and the drawer having no opportunity of complying therewith at the time, paſſes his bills payable at ſight; in ſuch caſe, the factor ſhould not accept them ſimply, but if he has a mind, may, under proteſt, accept them for the honour of the drawer, and re-value the ſame on him, if he continues without orders from his principal how to re-imburſe himſelf; but if the drawer ſhould find occaſion to draw at half uſance, when the other half is expired, in ſuch caſe he is obliged to accept the draughts freely and without reſerve.

114. If any one be drawn on by commiſſion, and ordered to re-draw the value on ſome other place, which he cannot comply with, either from no money's offering, or that the exchange is not within his limits, and it does not ſuit his conveniency to be in diſburſe, he may in ſuch caſe re-value directly on the drawer, or on any other place, even above the limited courſe, if he cannot do otherwiſe, though on the beſt terms he poſſibly can for his principal's advantage.

115. When any perſon drawn on by commiſſion hath accepted the bill, and the payment is not demanded when due, he muſt, notwithſtanding, debit the principal for its value, becauſe he is always obliged to pay it whenever it is aſked for.

116. The acceptor of a bill on commiſſion, drawn on him at time, may, and muſt demand on the drawer his accepted bill, if this latter ſhould think proper againſt the time of payment to call it in, and pay its import himſelf, and the drawer is obliged to reſtore it; but he ſhould, before he parts with it, clearly expreſs in writing upon it, that he himſelf called in the bill and ſatisfied it, and he is obliged to allow the acceptor at leaſt half commiſſion.

117. It is incumbent on him to whom a bill is remitted in commiſſion, 1ſt, to endeavour to procure acceptance; 2dly, on refuſal, to proteſt, if not forbidden, though not expreſsly ordered; 3dly, to adviſe the remitter of the receipt, acceptance, or proteſting it, and in caſe of the latter, to ſend the proteſt to him; and 4thly, to adviſe any third perſon, that is or may be concerned in it; and all this by the poſt's return, without further delay.

118. He that has bills remitted to him for the account of a third perſon, or to be at his diſpoſal, cannot place the ſaid bills either to his own, the remitter's, nor to any other's account, but is obliged to obſerve the order of him only for whoſe account and at whoſe diſpoſal they were remitted.

119. If a bill, remitted for the account, or to be at the diſpoſal of a third perſon, is indorſed or made payable at firſt to the receiver thereof, or to his order, he that receives the bill, if he has adviſed the perſon for whoſe account or at whoſe diſpoſal it was directed to be, that he hath received ſuch a bill for his account, &c. cannot revoke his word to pleaſe the remitter, but muſt attend the order of the ſaid third perſon; though, if he hath not written nor adviſed him thereof, he then may at the requeſt of the remitter, or the remitter at the inſtance of the poſſeſſor, obſerve the laſt order, to wait for further ones.

120. When divers bills are remitted for account of ſeveral perſons, and previous to the poſſeſſor's adviſing the exact ſum appertaining to each particular, one of the remittances ſhould be proteſted for non-payment, he may, if it ſuits him, re-value the ſame on the remitter; and in caſe he cannot get ſatisfaction there, the loſs will then fall on all the bills, to be proportionably divided *pro rato*, on the ſums recoverable of the ſaid remittance; and if the remitter ſtood *del credere* for any, he muſt loſe *pro rato* with the reſt.

121. When any one is drawn on for the account of a third perſon, and accepts the bill, under proteſt, for that of the drawer, adviſing him expreſsly thereof by the poſt's return, then the acceptor may, if he cannot obtain ſufficient proviſion from the principal, or the neceſſary orders for his re-imburſement before the draught falls due, re-value upon the drawer, without being obliged to ſeek his redreſs firſt from the third perſon for whoſe account the bill was; but if the acceptance, *ſupra* proteſt, was with the obligation of the drawer, then the acceptor muſt, if the drawer require it, have recourſe firſt for

for ſatisfaction to the ſaid third perſon, though without being further obliged than to re-value on him; and if his bill be proteſted, and not accepted or paid, then he hath his redreſs upon the drawer, who in this caſe muſt duly diſcharge the ſame.

122. And when proviſion for ſuch a bill, proteſted with the obligation of the drawer, is not timely made by the perſon for whoſe account it was drawn, but inſtead thereof he gives orders to re-value for the ſame, either by him directly or on ſome other place, the acceptor muſt in ſuch caſe, before compliance, conſult the drawer, as he is obliged to ſatisfaction at all events, and hold him bound till the ſum to be re-valued ſhall be punctually diſcharged; and if it is not, but the ſaid re-draughts return proteſted, then the acceptor who paid the original bills, and muſt now ſatisfy thoſe come back with proteſt, may re-value the ſum, with the charges, commiſſions, and proteſt, on the firſt drawer, who continued obliged to ſatisfy the ſame.

123. When a bill is accepted *ſupra* proteſt, for the account, or with the obligation of the drawer, and the acceptor repents of the ſteps he has taken, as ſuſpicious of the drawer's compliance with his re-draughts, he ſhould in ſuch caſe ſuffer the bills to return proteſted for non-payment, after having firſt adviſed him of his intentions, that the drawer may take new meaſures for their diſcharge.

124. If any one be drawn on for the account of a third perſon, and accepts the bill freely, the acceptor in ſuch caſe hath no redreſs on the drawer, who is freed from the obligation of accepting any re-draught on him, as the acceptor has diſcharged him by his free acceptance, and has only recourſe for his re-imburſement on the third perſon, for whoſe account he accepted.

125. When a factor hath occaſion to re-draw for the principal's account, to re-imburſe draughts, firſt drawn on him, he may paſs his bills not only according to order and within limits, but may exceed the order and limits ſet him; and if he hath no order, may re-draw without it, or even expreſsly againſt it in caſe of need, as he is under no obligation to be in diſburſe; and in caſe the principal will not accept his factor's bills ſo drawn, under pretence that they are without, above, or againſt order, the acceptor muſt proceed againſt him in law, and will undoubtedly recover both principal, charges, and damages.

126. In all the exchanges hitherto mentioned, the drawer receives caſh from the remitter, for bills given him, whoſe import he obliges himſelf ſhall be paid in ready money, at the time and according to the conditions therein agreed on. But there is yet another ſort, called mixt, or debt exchanges, wherein the drawer receives no money, but gives bills in payment of a debt; and in ſuch negociations the creditor is deemed the remitter.

127. And ſuch bills are made either for the recovery of an old debt, or to aſſure the payment of a new one, contracted for goods bought on truſt; and whether the debtor makes the bills payable by himſelf or another, and whether the debtor and creditor ſettle the courſe or not, the debt now changes its nature; and he that gives a bill of exchange becomes thereby liable to the laws concerning them, and may, upon failure, be proſecuted in a different manner than he could be for a book debt; and therefore a prudent creditor will, on receiving ſuch a bill, make an abſolute agreement with the debtor concerning the courſe; and upon receipt thereof, credit his account of goods, and debit his account current for the value.

128. It is unneceſſary in moſt countries to expreſs whether the value of bills was paid in monies or in any other commodities, and I think *France* is the only exception to this rule, if the debtor do but effectually receive it; and he that gives a bill for the payment of an old debt, or for goods then purchaſed, ſhould demand an acquittance from his creditor, acknowledging to have received ſatisfaction for ſuch a debt, or for ſuch goods, in ſuch and ſuch a bill of exchange, or ſo much of the debt as the bill of exchange amounts to; and on the contrary, the creditor muſt demand a receipt from the drawer, wherein he confeſſes to have received the value of ſuch a bill, either in an old debt, or goods bought, and for full payment, or in part.

129. When a creditor hath received ſuch a bill from his debtor in full or in part of his debt, and it is not complied with when due, he muſt not be perſuaded by his debtor to neglect following the ſtrict courſe and law of exchange, by proteſting, &c. nor ſhould give the acceptor longer time, though ſolicited thereto, unleſs the debtor engages under his hand that it ſhall in no ſhape be a prejudice to him, nor annul or leſſen the law ſubſiſting againſt himſelf, but that the poſſeſſor's rights ſhall be preſerved as

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entire as if he had actually proteſted in due form and courſe; for without this the debtor might diſown any ſuch order or requeſt, and defy his creditor, after he had neglected to ſecure the payment by the means the law afforded him.

130. When a bill is drawn by order, and for account of a third perſon and after being duly accepted, the acceptor fails, the drawer muſt make good the re-exchange and charges; but for theſe he hath his redreſs on him for whoſe account he drew, and may charge his account therewith, though the ſaid perſon hath already made a ſufficient proviſion for it to the acceptor or hath honoured his re-draughts; and if both the acceptor and the perſon drawn for fail, the drawer hath an action on them ſeparately to recover ſatisfaction.

131. If a bill be drawn, and accepted for the account of a third perſon, and he on whom it is drawn fails before the ſaid third perſon hath made him a ſufficient proviſion for its diſcharge, and if the drawer alſo fails, then he for whoſe account the draught was made, is freed from any obligation to pay it, though drawn for his account, unleſs the poſſeſſor will give him a ſatisfactory ſecurity to ſave him harmleſs both from the drawer and acceptor, or any of their creditors, aſſignees, &c. or unleſs it appears to him that the poſſeſſor is ſatisfied by the acceptor or ſome others for him, and doth relinquiſh all pretences to both the acceptor and drawer's effects.

132. When the poſſeſſor of a bill, payable to his order, fails, and to defraud his creditors, indorſeth it to another, who negociates it, and effectually receives the value, indorſing it again to a third, &c. and though the creditors, having diſcovered the fraud, oppoſite it, yet the acceptor muſt pay it to him who comes to receive it, on proof that he paid the real value for it; but, if the inſolvent poſſeſſor has made it payable to any other directly; he might probably be allowed a proviſion; but previous to his recovering the principal he muſt clearly prove how and when he paid the value; and muſt ſwear, that before the failure of the indorſer was known, the ſaid bill was, without any colluſion or deceit, purchaſed by and delivered to him; and if he refuſes to perform this, on an oppoſition from the creditors, he cannot legally receive a farthing; and in caſe he has recovered, he muſt refund it for the common benefit of the creditors, and muſt alſo draw and indorſe the bill that he received from the bankrupt poſſeſſor with an intent to defraud them.

133. When a bill is made or indorſed payable to any perſon, who, unknown to the acceptor, is become inſolvent before the day of payment, if he, ignorant of the poſſeſſor's failure, diſcharges the ſame, ſuch payment is good and valid; but if he pay to any other upon the poſſeſſor's order, after knowing of his inſolvency, he expoſes himſelf to the hazard of paying twice, and juſtly merits ſuch a pecuniary puniſhment for his indiſcreet and unfair proceedings.

134. When the poſſeſſor of a bill fails, and the acceptor can demonſtratively prove that it was remitted for the former's account, or upon account of a debt due to the poſſeſſor, either from the remitter or from any other on whoſe account the remittance was made, in this caſe the poſſeſſor is the true owner and principal of the bill, and the acceptor may pay it to him, and he muſt credit the value to the perſon for whoſe account it is; but if the bill be for the account of a third, or for the drawer's own account, and neither of them have received any valuable conſideration, from the poſſeſſor, for it, then it ought to be paid to him, as the inſolvent poſſeſſor is not the true owner of the bill, but merely a demander of ſatisfaction; and the acceptor ſhould be obliged, when due, to pay the ſame to the next order of the remitter, or the true owner of the bill for whoſe account it is.

135. If a ſuſpected poſſeſſor of a bill ſhould fraudulently twice draw effectually the ſame bill, and give the *firſt* to one man, with directions where to find the *ſecond* accepted; and the *ſecond* to another, with directions where to find the *firſt* accepted; in this caſe he only hath right and title to the money that firſt procures acceptance, he not finding any accepted bill as he was directed, whether it be to the *firſt* or *ſecond*, it makes no difference, nor whether it was firſt or laſt negociated by the fraudulent indorſer.

136. When the poſſeſſor of a bill is become a bankrupt, and in order to defraud his creditors, or others, conceals the bill, which they have good reaſon to conclude muſt ſtill remain in his hands, the acceptor is obliged to declare whether he hath accepted ſuch a draught, and if he anſwer in the affirmative, the creditors, or any other intereſted perſons,

perſons, may prohibit the acceptor's paying it without their knowledge and conſent; and if any one appear at the day of payment, to recover, he muſt declare and prove, that he is the true poſſeſſor of the bill; and if none appear, the acceptor is obliged to pay the import of it to the creditors or aſſignees of the bankrupt poſſeſſor, they giving ſecurity that the acceptor ſhall be no ways prejudiced thereby; or if he ſcruple doing it on their ſecurity, he may depoſit it in the hands of juſtice, for account of the true owners thereof; and if the acceptor refuſe compliance, both with one and the other, the creditors or their aſſignees may proteſt againſt him for non-payment, and ſend the ſame to the remitter to procure ſatisfaction of the drawer, and if he makes none, they may compel the acceptor thereto.

137. When a bill is made payable to the order of any perſon who has failed before it reach him, and he, notwithſtanding, on receipt, indorſes it, and makes it payable to ſome other, who demands acceptance thereof, and the acceptor, being ignorant of the failure of the firſt poſſeſſor, duly honours the ſame; in ſuch caſe the acceptor, getting knowledge of the bankruptcy of the firſt poſſeſſor, and that this preceded his indorſement thereof, may refuſe payment of the value to his order, as the inſolvent poſſeſſor had no faculty or power, after his failure to indorſe a bill of exchange; and therefore it would be honeſt and prudent in the acceptor, under ſuch circumſtances, to offer payment thereof to the creditors, provided they give him a ſufficient ſecurity for his indemnification, though if they refuſe this, he ſhould ſuffer the bill to be returned with proteſt.

138. It affords a juſt ſuſpicion of fraud, when the debtor of a bankrupt pretends a demand on the latter's effects for having accepted and paid a third bill, at the inſolvent's requeſt, to ſome of his creditors, whilſt his reputation ſtood yet unimpeached; or that the bill, whoſe third he ſubſcribed, was proteſted, and he forced to pay the re-exchange and charges; as the debtor and creditor or poſſeſſor of ſuch a bill may, by an undertaking between them, make many ſuch bills to the great detriment of the bankrupt's creditors.

139. When the poſſeſſor of a bill hath neglected to procure acceptance in time, and the perſon on whom it is drawn refuſes it afterwards upon account of the drawer's failure, the poſſeſſor has no greater privilege or preference to the drawer's effects in the acceptor's hands than the other creditors have, though the drawer drew merely on thoſe effects, and the draught would have been duly honoured if it had been preſented, and acceptance demanded, before the failure of the drawer was known.

140. Though the poſſeſſor of a bill, whoſe acceptor fails before it becomes due, hath an open account with him, and is his debtor for a greater ſum than the bill imports, and may now ſet off its value, yet it would be more prudent in him to proteſt the bill for non-payment, and ſuffer it to be returned.

141. If the drawer, or the party for whoſe account the bill is drawn, fails before proviſion is made to the acceptor, then this latter paying at the time, or if not accepted or not paid, but not returned with proteſt, the drawer is entitled to a preference, before all other creditors, upon any of the effects of the inſolvent that may be in their hands.

142. When the acceptor of a bill hath remittances made him to diſcharge it, by the perſon for whoſe account he accepts, and he, after receiving ſuch remittances, and before payment of the draught on him, *fails*, then the principal muſt anſwer the re-exchange and charges, and be content to come in with the reſt of the acceptor's creditors; but if upon the acceptor's failure the remittances are found in his poſſeſſion unreceived, then the principal, who made them, has a right to their return, and they muſt be paid to his order; and in caſe the other creditors have recovered their import ſince the acceptor became inſolvent, they are obliged to re-pay the ſame.

143. The poſſeſſor of a bill proteſted for non-acceptance or non-payment, whoſe drawer and acceptor are both failed, muſt concur with the reſt of the creditors, not only for the value that was paid, but alſo for the re-exchange and charges, and for the ſum that the drawer or acceptor ſhould have paid if they had continued ſolvent.

144. If both the drawer and acceptor fail, the poſſeſſor hath a juſt right and title to demand payment of both their effects; and it is in his option to begin with which he pleaſes firſt, and where the appearances are greateſt for a ſpeedy recovery; and if one

of one of their effects are not ſufficient for ſatisfaction, he may then get as much as he can of the other's, as they are both obliged.

145. And the ſame right that he hath to the effects or any thing elſe appertaining to the inſolvent drawer, or acceptor, till he hath received ſatisfaction, he has likewiſe againſt any or all the indorſers, if the bill be returned unaccepted, and they fail; and if the bill be accepted, and the acceptor, drawer, and indorſers ſhall all fail, he may come upon all their effects for ſatisfaction.

146. The poſſeſſor may demand the full ſum, with all charges, out of the goods and effects of that inſolvent drawer, acceptor, or indorſer, where he ſhall think proper firſt to make his claim; and what he receives there, he muſt place to account in part of payment of his demands; and if he does not receive full ſatisfaction, he cannot demand the whole again from another, but only the remainder, and ſo from one to another till he be entirely ſatisfied.

147. If the poſſeſſor of a bill, whoſe drawer, acceptor, and indorſers are all failed, receives ſomething in part of payment, and the bankrupt's truſtees do thereupon demand an acquittance, with the ceſſion of the action to him or them, the poſſeſſor ſhould not acquit nor transfer more of his right to them than for the value that he hath received.

148. When the poſſeſſor hath received from one of the bankrupts part of his demands, and applies to another of them for the payment of the remainder, he cannot cede or transfer his right of action againſt the perſon from whom he has recovered part, becauſe he was therefore admitted into the concourſe of creditors for his whole demand, and accordingly received his proportion; ſo that though a poſſeſſor enter into ſuch a concourſe, and receives as much of his debt as he can get from one of the failed parties, and thereupon doth abſolutely diſcharge him, yet for the remainder he may come upon the other indorſers or drawer, till his bill be fully ſatisfied, only he cannot transfer his action againſt him whom he hath diſcharged.

149. When the poſſeſſor of a bill, whoſe drawer, acceptor, and indorſers are all failed, does firſt receive in part of his demands from one of the bankrupts for whoſe account the bill was drawn, but had either drawn, indorſed, or accepted the bill for that of another, without having any effects in hand; then the poſſeſſor muſt enter into an agreement with him who paid in part, jointly to demand of the others (or any one of them) that failed, the remaining ſum, with charges.

150. If the poſſeſſor of an accepted bill dies without leaving executors, or any one to act in his affairs, ſo that no one hath authority to demand payment of it, or to give a ſatisfactory diſcharge, and yet ſome pretending hereto, apply for its recovery when due, and on refuſal proteſt for non-payment; in this caſe the acceptor muſt adviſe the drawer of all the circumſtances, and his motives for non-compliance, who muſt on his part conſult with the remitter to give further orders, or he may depoſite the ſum in the hands of juſtice, to be reſerved for the true owners.

151. If the poſſeſſor of a bill accepted ſhould agree and compound with the acceptor, and the drawer by the acceptor's debtor for the ſum he accepted, though the drawer be thereby diſcharged from the remitter and poſſeſſor, and alſo from the ſaid acceptor, yet the acceptor can debit the drawer for no more of that bill than he effectually paid, according to the compoſition.

152. But if the poſſeſſor hath made this compoſition with the acceptor, without the remitter's order or conſent, the remittance being for the remitter's account, the poſſeſſor will be liable to anſwer the whole ſum to him.

153. If the drawer or indorſers, being inſolvent, deny that the bills they have drawn and endorſed, and the acceptor has accepted, were for effects of their's which the acceptor had in his hand, or that they have ſince or before acceptance made proviſion for the diſcharge thereof, they muſt at the inſtance of their creditors prove the ſame.

154. Beſides the different ſpecies of bills before-mentioned there are others, called CONDITIONAL EXCHANGES, being ſuch as the drawer doth not therein abſolutely oblige himſelf to payment, but on certain terms agreed on; and in theſe bills, the condition muſt be clearly expreſſed, and on *that* the acceptor ſhould accept and pay, elſe not; wherefore if the condition be not clearly expreſſed, theſe kinds of bills are like bonds, liable to great diſputes and conteſts.

If

If the acceptance be in writing, and the drawer intend that it ſhall be only conditional, he muſt be careful to expreſs the condition in writing, as well as the acceptance; for if the acceptance ſhould, on the face of it, appear to be abſolute, he cannot take advantage of any verbal condition annexed to it, if the bill ſhould be negociated, and come to the hands of a perſon unacquainted with the condition; and even againſt the perſon to whom the verbal condition was expreſſed, the burthen of the proof will be on the acceptor. Vide *Doug.* 286. But,

A conditional acceptance, when the conditions on which it depends are performed, becomes abſolute.

155. The accepting a conditional bill obliges the acceptor (whether he be the drawer himſelf, or any other) abſolutely to the payment, if the condition agreed upon be performed, or the poſſeſſor will oblige himſelf to the performance. So an acceptance, on account of the ſhip *Thetis*, when in caſh for the ſaid ſhip's cargo, is ſufficient to bind the acceptor. *See Kyd's Treatiſe on the Law of Bills of Exchange and Promiſſory Notes.* London, 1790.

156. Though the poſſeſſor of ſuch a bill is ſometimes obliged to perform the condition, and ſometimes not; as exchanges grounded on impoſſible, unlawful, or indecent conditions, are *ipſo facto* null and void.

157. When the poſſeſſor *is abſolutely obliged* to the performance of the condition it is not enough for him to mortify or deſtroy the bill, excuſing to demand payment thereof, but he is obliged to make good to the acceptor the loſs and intereſt that he, or any other concerned, is like to ſuffer from the non-performance of the condition.

158. And on the contrary, when the poſſeſſor *is not abſolutely obliged*, then if any thing happens without the poſſeſſor's fault, that may hinder him from performing the condition, it does not always free and diſcharge the drawer or acceptor, but he is in ſuch caſe obliged to pay the bill, though the poſſeſſor do not perform the condition, if he will but make good the loſs to the acceptor or drawer.

As for example,——*A.* of *London* contracts with *B.* of *Leghorn*, to provide for him a bale of ſays, on the moſt reaſonable terms, and to ſend them to *Leghorn* at his own (*A*'s) riſk, charging *B.* ſo much *per cent.* (as ſhall be agreed) for his commiſſion, riſk, and diſburſe, in the invoice, whoſe import *B.* ſhall be obliged to pay in eight days after the arrival of the ſaid goods at *Leghorn*; which agreement being carried into execution, and the ſays ſhipped, and invoice ſent, *A.* draws the amount on *B.* in the manner following, *viz.*

London, January the 7th, 1794.

Exchange for 100*l.* ſtr. at 51*d. per* dollar.

EIGHT days after the arrival of the bale of ſays, *per* the *Goodfellow*, capt. *John Saunders*, marked *B.* N°. 1, at *Leghorn*, pay to *C. D.* or order, for coſt of the ſame, the ſum of one hundred pounds ſterling, at fifty-one pence ſterling *per* dollar, value in account, and place it to account, as *per* advice from

A.

To Mr. *B.*
Merchant at *Leghorn.*

And when *B.* has accepted the bill, he is obliged to comply with its contents, without any regard had to the riſe or fall of the goods, or any other circumſtance whatſoever that does not hinder their delivery; but if the ſays are loſt at ſea, then the acceptance is null, and the bill mortified; yet if they arrive and are delivered, though damaged, *B.* muſt receive them and pay the bill, and afterwards charge *A.* with what the damage ſhall be rated at, on a ſurvey taken by authority.

And, if a merchant undertake to accept bills to a certain amount, on condition that a cargo of an equal value be conſigned to him, and an order given for inſurance. If the cargo conſigned do not equal the value, he is not bound to accept. *Kyd*'s Law of Bills of Exchange, p. 53.

A ſmall

A ſmall matter will frequently amount to an acceptance, according to the circumſtances of the caſe: Thus, if a merchant ſay, "leave the bill with me, I will look over my books and accounts between the drawer and me, call to-morrow, and accordingly the bill ſhall be accepted; this is no complete acceptance, becauſe it depends on the balance of the account, and on the merchant's having effects in his hands to anſwer it, ſo that he gives no abſolute credit to the bill. *Kyd*'s Law of Bills of Exchange, p. 53.

But if he ſay, "leave the bill with me, and to-morrow I will accept it;" this is an acceptance, for it gives credit to the bill, and prevents the holder from taking the neceſſary ſteps againſt the drawer.

What ſhall be conſidered as an abſolute, or conditional acceptance is a queſtion of law, to be determined by the court, and is not to be left to the jury. 1 Term. Rep. 184.

159. Among conditional exchanges may alſo be reckoned thoſe bills that are given upon account of any wager, or for the aſſurance of things dubious. And thoſe made upon account of a wager, &c. are either ſingle or reciprocal and mutual. The ſingle one's are ſuch as follow—a perſon's giving a ſum of money to another, who in return gives him a bill of exchange, payable for a larger ſum than he received at the day of marriage, ſurrender of ſuch a beſieged town, or any other contingent or uncertain event; as alſo to ſecure a requital for ſome favour or ſervice done, when the bill may be made as follows, *viz.*

London, March 7th, 1794.

FOURTEEN days after I am nominated a commiſſioner of the exciſe (*or after I have obtained ſuch a ſuit of law*, &c.) I promiſe to pay to *A. B.* the ſum of one thouſand pounds, &c.

C. D.

N. B. *This I think is rather a promiſſory note of hand than bill of exchange; however, as it is termed this latter by ſome good authors, I ſhall not preſume to new name it.*

160. When a conditional bill is not accepted, or if accepted, not paid, the poſſeſſor muſt proteſt, and ſeek his redreſs and ſatisfaction from the drawer; taking care to inſert in the ſaid proteſt, and alſo to prove that the condition was performed, or that he was ready and willing to perform it, otherwiſe the proteſt is of no value.

161. In caſe the poſſeſſor of a conditional bill, who is abſolutely obliged to the performance of its contents, would mortify the ſum, and not demand payment to avoid performing the condition, in ſuch caſe the acceptor may compel him thereto, by depoſiting the money, and proteſting againſt the poſſeſſor for non-performance of conditions and all damages occaſioned thereby, and then proceed againſt him according to the law and cuſtom of exchanges; and the reaſon is, becauſe he, the poſſeſſor, would have acted in like manner againſt the acceptant, if he had been tardy.

162. If a condition whereon an exchange contract is grounded, was once poſſible, after the poſſeſſor had procured acceptance, if the poſſeſſor was obliged to perform it, or after the remitter received the bill from the drawer, provided the former obliged himſelf to a performance, and it ſhould afterwards be morally impoſſible, their neglecting the opportunity makes them liable to ſatisfy all the damage and loſs that the drawer, acceptor, or any other concerned ſhall prove they have ſuffered and ſuſtained in it, becauſe his condition was the cauſe of the contract.

163. A condition may be ſaid to be performed, though it be not actually performed by the poſſeſſor, if another acts for him and does it by his order, or if another concerned in it acknowledge it as *quaſi* performed, and this will oblige the acceptor to pay. As thus, if *A.* pay to *B.* then pay to *C.* &c. or if *A.* and *B.* diſcount, or *B.* confeſſes himſelf ſatisfied, the condition is performed.

164. As *pro forma* exchanges are frequently practiſed, I ſhall mention ſome particulars concerning them in this general treatiſe of all the different ſpecies of bills; and ſhall firſt obſerve, that when any one would draw on his debtor, and avoid the riſk of having

having his bill returned, he may make his draught payable to a friend, or ſome dependent, and for the greater formality, inſert value of ſome one, though he has received none, and another perſon's name may be uſed, as a remitter, with or without his knowledge and conſent, or a feigned name may be inſerted inſtead thereof, though this muſt only be done when the bill is made payable to a third, or any other perſon, or his order, for if the bill be made payable to the perſon whoſe name is uſed as a remitter, or his order, it muſt be with his conſent and approbation.

165. When a feigned name is uſed, or any true name unrequired, and only *pro forma*, the drawer muſt neceſſarily adviſe the perſon to whom or to whoſe order it is payable, that the value is only ſet *pro forma*, and the name feigned or uſed without the perſon's knowledge; but if any man's name is inſerted with his conſent, the bills are uſually made payable to his order, who is the remitter *pro forma*, demanding acceptance and payment in his own name, by which means the correſpondent need not know but that the bill is real, otherwiſe he muſt be acquainted with the truth, and that the bill was only made *pro forma*.

166. A man ought to be very circumſpect in lending his name to a *pro forma* bill made payable to his order, as ſuch bills cannot be drawn in, nor will be paid without his indorſement; and this, though it be only to pleaſure the drawer, and for form ſake, will oblige the indorſer to the poſſeſſor really and abſolutely, and not formally only.

167. When a bill, wherein a perſon's name is uſed *pro forma*, is made payable to his order, and drawn in or negociated and indorſed by him, the poſſeſſor muſt make good the value to him, and not to the drawer, though he knew certainly that the indorſer's name is only uſed *pro forma*; except the indorſer, by an order under his hand, direct the holder to make it good to the drawer, or unleſs the indorſer, at the requeſt of the drawer, had indorſed it in blank, in which caſe the drawer, however, is obliged to indemnify the poſſeſſor from all damage or claims that the indorſer might futurely make.

168. He that, to pleaſure his friend, ſuffers himſelf to be made the remitter of a *pro forma* bill, and does draw in and indorſe it, whether he receives the value himſelf, or pays, or aſſigns it to the drawer, he ought, though he has no intereſt in the whole negociation, to make a minute thereof in his books, at leaſt to enter it in his waſte-book, as a memorandum; and to receive the value himſelf is moſt prudent, as the drawer's aſſignment on him for it afterwards, will be his acquittance.

169. When any one draws upon his debtor, and to prevent loſs by proteſting, makes the bill payable to the order of ſome perſon, who, after acceptance procured, will draw it in, or direct his correſpondent to receive it, and for form makes the value received; he ſhould be very cautious whoſe name he makes uſe of, and to whom he ſends the bill, that in caſe the ſaid remitter ſhould happen to draw it in, and it ſhould be proteſted for non-payment, and the indorſer prove inſolvent, he, the drawer, may not be obliged to ſatisfy the re-exchange to the poſſeſſor of his bill, without having received any thing for it; or if the ſame ſhould be paid, he do not barter a bad debt for a worſe, and quite loſe his money.

170. When a drawer dares not draw in the bill, whoſe value he hath made received *pro forma*, fearing leſt the perſon it is addreſſed to ſhould not accept it, or not pay it if he did, and therefore makes it directly payable to one living at the ſame place with his debtor, adviſing his correſpondent that for ſome particular reaſons the value is made received, though only *pro forma*; in this caſe, the poſſeſſor ſhould act with prudence and caution, in paying the amount of the bill after receiving it, which ought not to be to the drawer, without an expreſs order from the remitter, or the perſon whoſe name is uſed as ſuch, for his ſo doing; or unleſs the drawer give him a ſufficient ſatisfaction, and he knows him to be both a ſolvent and honeſt man.

171. Among *pro forma* exchanges, thoſe bills muſt be reckoned which are drawn on a debtor, and remitted to a creditor of the drawer's; to be paid to his order, value of the ſame, *pro forma*, and without agreeing to any courſe, only requeſting from him to procure payment, and place it, when received, to his account.

172. A debtor, on giving ſuch a bill to his creditor, ſhould demand a receipt from him for the bill, with an acknowledgment that his name as remitter is only uſed *pro forma*

forma, and obliging himſelf when paid, either to remit or credit it to the drawer, according to the then current courſe of exchange; but, if he cannot recover the bill, he muſt excuſe putting the drawer to any further charge for proteſts, &c.

173. And when a creditor admits of ſuch a bill from his debtor, he ſhould take from him an order under his hand, to ſend the ſaid bill to his correſpondent, or to demand himſelf acceptance and payment, that in caſe the money ſhould be received by his correſpondent, but not remitted to him, or being remitted, the remittances are not paid, or that proteſts not being made in due form, &c. the debtor may have no room to complain of his creditor, who will by this means avoid expoſing himſelf to the loſs that may accrue from the correſpondent's miſmanagement, which, had he acted without orders, he would be liable to pay.

174. And if in ſuch a caſe the debtor fixes his courſe with his creditor, whether before or after the acceptance is procured, and does credit his account current with the ſum; or elſe when another, whoſe name is uſed *pro forma* agrees for the courſe with the drawer, and pays him the value, then his exchange loſes its *pro forma* nature, and becomes actual and real; and in caſe of proteſt, the drawer is obliged to make good the re-exchange and charges.

175. When ſuch a bill, at the requeſt of the debtor, is by the creditor drawn in, and the value is made him good in account current, the loſs by re-exchange and charges appertains to the debtor; but, if the creditor draws in the bill without the drawer's order, the loſs muſt be his, if any happen.

Of the Loſs of Bills of Exchange.

176. BILLS of EXCHANGE are often *loſt* by being miſlaid, the poſt's miſcarriage, or various other accidents; it is therefore cuſtomary to give three of the ſame tenor or date, as has been before obſerved, and ſometimes four or more, concerning which I ſhall mention ſome particulars, for my reader's government and information.

177. When a remitter declares to the drawer, that the bills he received are loſt, or ſo miſlaid that he cannot find them, and deſires him to repay their value, under a ſatisfactory indemnification from any future prejudice or demands about them; the drawer in this caſe, is not obliged to comply, though the negociation was for his own account; only, he muſt give other bills, and take care that theſe be exactly the ſame with the former, differing in nothing, but that, if he had given the firſt, ſecond, or third before, he now adds the fourth and fifth, though this ſhould not be done neither, after the bills are fallen due, unleſs the remitter give the drawer ſufficient ſecurity to bear him harmleſs

178. It is the duty of all poſſeſſors of bills to have a ſpecial care of them, that they may eſcape the afore-mentioned accidents; and it would be prudent in every merchant to fill up blank indorſements, as ſoon as he conveniently can, after receipt, leſt he ſhould loſe them, and the finder do it for him.

179. Whenever a poſſeſſor diſcovers that he hath loſt a bill, he ought inſtantly, or at leaſt before the day of payment, to adviſe the acceptor thereof, with the precaution not to pay it to any other than him, or his order, and in caſe another come to recover, to ſtop it, and adviſe him thereof.

180. If the accepted bill be the *firſt*, and is made payable to the order of one at the place of its diſcharge, and he in whoſe favour it is, intends to draw in the *ſecond*, but has loſt the *firſt* that was accepted, and has no *third* or *fourth*, nor cannot procure them, as the drawer is dead, or abſent, &c. he may yet draw in and negociate the ſum, if the indorſer, in caſe his firm be unknown to the acceptor, ſends a full power, by letter of attorney, to him he would have it paid to, for receiving it; but if the indorſer's hand be

be well known, and himſelf in good credit, then a written order to the acceptor for its payment, with an indemnification, will be ſufficient.

181. But it ſhould likewiſe be remarked as an act of imprudence in an acceptor, to ſatisfy a bill made payable to order, though by him accepted, if that, or another of the ſame tenor and date, be not indorſed in due form, and delivered up to him, with the accepted one, at the time of payment, though demanded by the perſon whom the remitter or indorſer hath impowered for that purpoſe; but when the accepted bill is loſt, and the *ſecond*, unaccepted, is regularly indorſed till it come to him to whom it is payable, the acceptor, in ſuch caſe, is obliged to pay the ſame when due, upon a ſufficient ſecurity given him to deliver up the accepted bill if it again appeared, or to indemnify him from any future demands for its value.

182. When any one miſſes his accepted bill, whether payable directly to the poſſeſſor or to his order, or if ſuch a one receive advice from his correſpondent that he has remitted him *ſuch a ſum, in ſuch and ſuch a bill*, &c. though on opening his letter he finds the bill is not incloſed, or if the letter and bill have miſcarried, of whoſe forwarding he has advice by the ſucceeding poſt, and finds that the day of payment draws ſo near, as to hinder his getting other bills in room of the laſt one, he may when it comes due, demand payment upon his letter of advice, with the tender of ſecurity to free and diſcharge the acceptor from any future demands of that ſum, by virtue of the loſt bill; and if the acceptor will not pay on thoſe terms, he may be proteſted againſt for re-exchange and charges.

183. When an accepted bill, proteſted for non-payment, is loſt, the drawer is not obliged to make good the re-exchange and charges, unleſs he obtain ſufficient ſecurity to indemnify and free him from all future demands, and engage a reſtoration of the ſum with intereſt, which he ſhall have paid for the re-exchange and charges, in caſe it ſhould appear that the bill, pretended to be loſt, ſhould afterwards be paid by the acceptor or any other *ſupra* proteſt.

184. When an accepted bill is loſt or miſlaid, the remitter or poſſeſſor cannot have immediate ſatisfaction from either the acceptor or drawer, but muſt proceed againſt them in the ordinary courſe of law, as if it was for ſome other kind of debt, as a proteſt cannot be made but upon an accepted bill, or the refuſed offers of indemnity.

185. *Marius* adviſes, that as ſoon as the poſſeſſor of a bill miſſes it, he ſhould have immediate recourſe to the acceptor, and in the preſence of a notary and two witneſſes, acquaint him with its being loſt; and ſignify to him, that at his peril, he pay it to none but thoſe with his order; and *he* adds, that no one ſhould refuſe payment of a bill he has accepted becauſe it is miſſing: As *he* aſſerts, that proteſt being made for non-payment, upon the offer of a ſufficient ſecurity and indemnification, will oblige the acceptor to make good all loſſes, re-exchange and charges, as he wilfully occaſioned them. But if a bill, loſt by the poſſeſſor, ſhould afterwards come into the poſſeſſion of any perſon, who ſhall have paid a full and valuable conſideration for it, without knowledge of the circumſtance of its having been loſt, the drawer and the acceptor, if the bill was accepted, or the drawer, if it was not accepted, muſt pay it, when due, to ſuch a fair poſſeſſor, ſo that *Marius*'s Law ſeems very doubtful, and the proviſion of the ſtatute of *Will.* III. may in many caſes be uſeleſs, to the loſer of the bill.

So, by the Statute of 9 *Will.* III. *Sect.* 3. "It is provided, that in caſe, any ſuch inland bill or bills of exchange, as mentioned in the former part of the act, ſhall happen to be loſt or miſcarried within the time before limited for the payment of the ſame, then the drawer of the ſaid bill or bills, is and ſhall be obliged to give another bill or bills of the ſame tenor with thoſe firſt given, the perſon or perſons to whom they are or ſhall be ſo delivered giving ſecurity, if demanded, to the ſaid drawer, to indemnify him againſt all perſons whatſoever, in caſe the ſaid bill or bills of exchange, ſo alledged to be loſt or miſcarried, ſhall be found again."

186. If the *firſt* accepted loſt bill was made payable to him that loſt it, and the *ſecond*, unaccepted, ſhould be made payable to another man, then if the money be really paid when due to him, to whom the *firſt* accepted, though loſt bill was payable, ſuch payment is warrantable and good, and the poſſeſſor of the *ſecond* can have no demand on the acceptor.

187. And

187. And ſuppoſe the ſaid *firſt* accepted bill ſhould be found by a ſtranger, who demands the money in the name of him to whom it is made payable, or that the true poſſeſſor ſhould have aſſigned it to another, and taken up the value, yet neither can have any demands on the acceptor, if previous thereto he has paid it to whom it was payable, though without the accepted bill, under a proper ſecurity and indemnification.

188. If a bill of exchange be loſt by him, with whom it was left for acceptance, or that he hath by a miſtake given it to a wrong perſon, or by any other change or intention, the poſſeſſor cannot obtain a return of his bill, neither accepted nor unaccepted, he that loſt it is obliged to give the perſon to whom it was payable, or to his order, a note of hand for payment of its amount on the day it becomes due, upon delivery of the *ſecond*, if it arrives in time, or if not, upon the ſaid note, which in all caſes is to have the law and privilege of a bill of exchange; and, if the acceptor refuſe this, the holder muſt immediately proteſt for non-acceptance, and when due muſt demand the money, though he has neither note nor bill, which, if refuſed, a proteſt muſt be regularly made for non-payment.

Where an original bill is loſt, and another cannot be had of the drawer, a proteſt may be made on a copy, eſpecially where the refuſal of payment is not for want of the original bill, but merely for another cauſe. *Kyd*'s Law of Bills of Exchange. P. 88.

189. The poſſeſſor of a bill ſhould be careful that it be ſent to the place of payment in time for its recovery, and not detain it to the laſt moment, as the irregular arrival of the poſt may hinder it from getting there till after due, in which caſe, a proteſt will be inſignificant in regard to its recovery of the drawer, as this was not timely demanded; and therefore he that conſtitutes himſelf another's agent, and receives bills to ſolicit their recovery, and neglects demanding payment when they are due, or, if refuſed, omits proteſting, will be obliged to make good the damage that ſhall accrue through his remiſſneſs.

190. He that is poſſeſſor of a bill, which only ſays, *pay*, without mentioning the time, when or that it is without a date, or not clearly and legibly written, payable ſome time after date, &c. ſo that the certain preciſe time of payment cannot be calculated or known, muſt be very circumſpect, and demand the money whenever there is any probable appearance of the time's being completed that was intended for its payment, or that he can demonſtrate any circumſtance that may determine it, or make it ſeem likely when it ſhould be paid.

191. When a perſon hath a bill ſent him to demand acceptance, with directions to hold it at the order of the *ſecond*, and if the ſame is not produced, properly indorſed, at the time it becomes due, nor the *firſt* aſked for, the poſſeſſor of this may demand payment thereof, on giving ſecurity to produce the indorſed bill, and in caſe of refuſal he may proteſt for non payment, and ſuch a proteſt is of validity againſt the drawer; but yet, if he that hath the bill omits to demand payment, and to proteſt, he is no ways culpable nor reſponſible, but the retainer of the indorſed bill may thank himſelf for his careleſſneſs.

192. Though a bill be not indorſed, or the indorſement not right, but ſomething wanting in it, yet the poſſeſſor is allowed to demand payment, and the acceptor is obliged to make it, upon delivery of the two bills, if he will under his hand and ſeal oblige himſelf to procure the third properly and truly indorſed.

193. If, through miſtake, the words and figures deſcribing the ſum in a bill of exchange differ, the former are to be preferred, until further advice clear up the diſagreement; as it is more natural to ſuppoſe that a man may miſtake in making a few figures than in writing ſeveral words, and the former at the top of the bill only ſerving to expreſs an abbreviation of the latter wrote at length in the body, and are indeed the very ſubſtance of it, and therefore more particular regard ought to be had to them than the others; and for the ſame reaſon, though the ſum figured in the letter of advice and bill do agree, the words in the body of the bill ſhould determine the affair, at leaſt till the certainty can be known.

194. And if the name of the perſon to whom the bill is payable ſhould be altered, eraſed, or interlined before acceptance, this will not juſtify the acceptor's refuſal to pay it when due to the perſon whoſe name has been ſo mended or interlined, as he muſt or ought to have taken notice of ſuch an eſſential particular, when he accepted the bill,

196. Another

and ſhould have ſtarted the objection and ſatisfied himſelf about it before accepting, as this obliges him to a compliance, even though he ſhould aver that the amendment or interlining was made after, except he can prove it, which it will lie upon him to do.

195. If the direction on a bill of exchange be forgot, but the remitter adviſe his correſpondent on whom it was intended to be drawn, the poſſeſſor may demand acceptance, and in caſe of refuſal proteſt againſt the drawer, and recover the charges of him; and in caſe the perſon drawn on have a letter of advice from the drawer, deſiring him to accept ſuch a bill, he may ſafely do it, though it comes without a direction.

196. Another method of exchanging, very different from all thoſe before-mentioned, is *that* by bills on Marts and Fairs, and though the *Engliſh* have very little concern in theſe negociations, I have thought it not foreign to my deſign of giving my readers a general notion of exchanges, to deſcribe the nature of thoſe particular ones; which I ſhall do in ſpeaking of a few of the moſt conſiderable, and from theſe a juſt idea may be formed of all the reſt.

197. There are many fairs in *Europe*, where buſineſs for very great ſums is tranſacted; as at *Lyons*, *Rheims*, *Rouen*, *Bourdeaux*, *Troyes*, *St. Denis*, *Dieppe*, *Toulon*, &c. in *France*; *Francfort*, upon the *Main*, *Leipzick* and *Naumbourg*, in *Germany*; *Bolzano*, in the *Ferol*; and *Novi*, ſubject to the *Genoeſe*; with divers others unneceſſary to be mentioned here; and, as I propoſed, I ſhall limit what I have to ſay concerning them in regard of bills, to thoſe of *Lyons*, *Frankfort*, *Leipzick*, or *Leipzig*, and *Naumbourg*, being the moſt conſiderable of all others.

198. There are yearly four fairs at LYONS, in which each hath his payment of bills, bearing the name of the preceding fair; the *firſt* is that of the *Epiphany*, which always begins in *January*, the *Monday* after *Twelfth Day*; the *ſecond* is *Eaſter* fair, beginning on St. *Nyſier*'s Day, in *April*; the *third* is *Auguſt* fair, which begins on St. *Dominick*'s Day in that month; and the *fourth* is the fair of *All Saints*, beginning on St. *Hubert*'s Day, in *November*; and as each fair has its payment, the major part of the bills on this city are not made payable in fair time; and though they ſhould be, they will only be diſcharged afterwards in the payment of that fair, which payments are regulated as follows, *viz.*

199. The payment of the *Epiphany* begins the firſt, and ends the laſt of *March*; that of *Eaſter* begins the firſt, and ends the laſt of *June*; that of *Auguſt* begins the firſt, and ends the laſt of *September*; and that of *All-Saints* begins the firſt, and ends the laſt of *December*; ſo that when bills are drawn to be paid at one of theſe appointed times at *Lyons*, that is not yet begun, the drawer ſays, *pay this my firſt of exchange*, &c. *in the next* Epiphany *payment*, *or in the next* Eaſter *payment*, &c. but if the payment is already begun the bill muſt then be drawn payable *in this current*, or preſent *payment of* Epiphany, *or this current payment of* Eaſter, &c.

200. It was cuſtomary formerly to make the bills drawn from *Amſterdam* and elſewhere, on the payments of *Lyons*, in golden crowns of the ſun; but as this ſpecie has been long ſince decried in *France*, the preſent uſage in exchange is to draw for the payments of *Lyons*, as is practiſed on all other parts of that kingdom, *viz.* in crowns of ſixty ſous.

201. The bills drawn in the above manner, are to be accepted in the ſix firſt days of the payment they are made payable in, and the perſon they are drawn on is not obliged to declare whether he will or will not accept till the ſixth day, but after that day, the bearer may proteſt them for non-acceptance, though he ſhould detain them during the whole time of that payment, to ſee whether any one offers to diſcharge them; however the proteſt ſhould immediately be forwarded to the remitters; and if any one pays a bill of exchange in the time of the payment, before the ſixth day, or if this be a feaſt the day following, it will be at his own riſque.

202. The bearers of bills not ſatisfied by the laſt day of any payment, muſt proteſt them on the third day after the payment finiſhes, otherwiſe they will loſe their right againſt the drawers; but if this is done in form and in the time preſcribed, the holder may afterwards refuſe payment from any one that offers it, and take his re-imburſements on the drawer, both for principal and charges.

203. And the ſaid poſſeſſors of bills are obliged to take their re-imburſement on the drawers or indorſers in a time limited, *viz.* for all bills drawn from any part of *France*, in *two months*; thoſe which are from *Italy*, *Switzerland*, *Germany*, *Holland*, *Flan-*

ders, and *England*, in *three months*; and thoſe which are drawn from *Spain*, *Portugal*, *Poland*, *Sweden*, and *Denmark*, in *ſix months*, to be counted from the date of the proteſt; and in default thereof they will loſe their rights againſt the drawers or indorſers.

204. FRANCFORT has two annual fairs of great reſort, *viz.* the *firſt* is the fair of *Eaſter*, beginning the *Sunday* before *Palm-Sunday*, that is, fifteen days before *Eaſter*; and the *ſecond* is the *September* fair, which commences the *Sunday* preceding the birth of the Virgin *Mary*, which is the 8th of *September*, if this feaſt happens on *Monday*, *Tueſday*, or *Wedneſday*; but if it falls out on *Thurſday*, *Friday*, or *Saturday*, then the fair does not begin till the *Sunday* following, or on the *Sunday* which that feſtival may fall on.

205. Each of theſe fairs laſts fifteen days or a fortnight; the firſt week is appointed for accepting, and the ſecond for paying the bills of exchange; the acceptance payable in fair-time is made from the *Monday* of its opening to the *Tueſday* of the ſucceeding week at nine o'clock in the morning, after which hour the poſſeſſor of a bill is no longer obliged to wait for payment, but ſhould proteſt, or at leaſt note it for non acceptance, which indeed he may do from the moment that acceptance is denied.

206. Bills on theſe fairs were formerly accepted verbally, but they muſt now be accepted in form as other bills are, by ſubſcription of the acceptor's name, with the day of its acceptance; and when a bill thus accepted is not ſatisfied before *Saturday* noon in the week of payment, the bearer is obliged to proteſt it for non-payment, by carrying it to the notary eſtabliſhed for that purpoſe, between two o'clock and ſun ſet, that he may note it, after which he muſt ſend the proteſt *per* firſt poſt.

207. LEIPZICK has three fairs yearly; the *firſt* being called the *New-Year*'s fair, commences on the firſt of *January*, or on the 2d, if the firſt be on a *Sunday*; the *ſecond* is at *Eaſter*, beginning always on the *Monday* three weeks from that feaſt; and the *third* begins the firſt *Sunday* after St. *Michael*, whether that day happens on a *Sunday* or not.

208. Theſe fairs are opened on the appointed days by the ringing of a bell, and which rings again eight days after to finiſh them; ſo that theſe eight intermediate days between the two ringings is properly the fair, and the acceptance of bills is demanded on the firſt or ſecond of theſe days; but if the perſons on whom they are drawn have a mind to defer their acceptance till the week of payment, they may; which week begins immediately after the bell has rung to end the fair, and laſts till the fifth day following inclusive; ſo that the bills on the *New-Year*'s fair ought to be paid the 12th of *January*, and thoſe on the fairs of *Eaſter* and *Michaelmas*, the *Thurſday* in the week of payment, otherwiſe to be duly proteſted.

209. It is permitted to the holders of the bills to proteſt them for non-acceptance, immediately on refuſal, but not to return them; on the contrary, they are obliged to keep them till the fair is entirely finiſhed, to ſee if any one offers payment; and as what is called the *Convoy of Nuremberg* departs from *Leipzick* at ten at night of the proteſting day, there is no room to make one after that hour, and the poſſeſſors will forfeit their right againſt the drawers if they let the time ſlip.

210. NAUMBOURG holds a very conſiderable fair yearly on the feaſt of St. *Peter* and St. *Paul*, which is commonly reckoned as the fourth of *Leipzick*, becauſe the generality of the merchants attending the one have recourſe to the other: This fair begins on the feſtival of the ſaid two ſaints, being always the 29th of *June*, and it only laſts eight days; bills are accepted on the firſt and ſecond days of the fair, and ought to be paid on the 3d of *July* at furtheſt, or proteſted for non-payment; but it is not cuſtomary to return them with the proteſt till after the 5th of the ſaid month, on which day the fair ends; and if the bills are not then paid, the holder may ſend them back by the firſt poſt.

211. As the preceding exchanges differ from all others, I ſhall here add a few neceſſary obſervations for the government of thoſe who engage therein; as it is certain that the greateſt part of thoſe who take bills on fairs do it with the lucrative view of employing their money to greater advantage than common, either by negociating the ſaid bills when the time of the fairs or payments approaches, or by ſending them to the places drawn on to be recovered and remitted them, which is commonly done with a conſiderable profit: but as there is indiſputably a much greater riſque in taking bills on fairs, than on places where their goodneſs or validity muſt be immediately known, thoſe who take them on the former, cannot act with too much caution in regard of the drawers.

212. And

212. And the reaſon is very apparent to any one who ſeriouſly reflects on ſuch negociations; for ſuppoſe I take a bill of exchange upon *Lyons*, payable at three uſances, dated the 22d of *April*, I can immediately ſend it forward, and in a little time have the advice of its acceptance, when I have two debtors or ſecurities, *viz.* the drawer and acceptant; whereas if I take a bill of the ſame date, payable in the payment of *Eaſter* fair which finiſhes the 31ſt of *July*, and is the ſame day, as the laſt of grace or reſpite to the above-mentioned bill taken at three uſances, and whoſe ſucceſs, whether it will be accepted or not, I cannot learn till about the 13th or 14th of *July*, becauſe, as I have before obſerved, *the bills drawn upon the payments of* Lyons, *are only accepted during the ſix firſt days of payment*; now if from the 22d of *April* to the beginning of *July* the drawer of my bill fails, I have great reaſon to believe it will neither be accepted nor paid; whereas if that drawn at the three uſo's is not accepted, I ſhall know towards the 8th or 9th of *May*; and may have my recourſe againſt the drawer, who may be in a better condition then to give me ſatisfaction or ſecurity than on the 13th or 14th of *July*, or the 10th or 11th of *Auguſt*, after getting my bill with proteſt for non-payment; and this may ſuffice for what regards the payments and exchanges on fairs.

213. I have already quoted ſundry acts of parliament in force, relative to inland bills of exchange, which have greatly altered their nature from what it was before their exiſtence; I ſhall now introduce ſome new caſes which have been tried in our courts of law, in which very ſingular and unprecedent circumſtances have occurred; and have ſo greatly perplexed not only the gentlemen at the bar, but even the learned judges on the bench, that final deciſions will be ſolicited, upon caſes made out expreſsly for that purpoſe, from the ſupreme tribunal of the kingdom, the Houſe of Lords. But before we proceed to theſe recent trials, it will be neceſſary to notice in their order, a few deciſions prior to them; and which are nevertheleſs of the firſt authority, and of unſhaken validity.

214. A writ of error was brought on a judgment by *nil dicit* in an action againſt the drawer of an inland bill of exchange, and it was objected that ſince the act of 9 *Will.* III. no damage ſhall be recovered againſt the drawer upon a bill of exchange, without a proteſt, and therefore the action lies not, there being no proteſt.

But *Holt* C. J. The ſtatute never intended to deſtroy the action for want of a proteſt, but only to deprive the party of recovering intereſt and coſt upon an inland bill againſt the drawer without notice of non-payment by proteſt: For before the ſtatute, there was this difference between foreign and inland bills of exchange; if a bill was foreign, one could not reſort to the drawer for non-acceptance or non-payment without a proteſt, and reaſonable notice thereof: But in caſe of an inland bill, there was no occaſion for a proteſt; but if any prejudice happened to the drawer, by the non-payment of the perſon drawn upon, and that for want of notice of non-payment, which he to whom the bill is made ought to give, the drawer was not liable; and the word *damages* in the ſtatute, was meant only of damages that the party is at of being longer out of his money by the non-payment of the drawer, than the tenor of the bill purported, and not of damages for the original debt: And the proteſt was ordered for the benefit of the drawer; for if any damages accrue to the drawer for want of proteſt, they ſhall be borne by him to whom the bill is made; and if no damage accrue to him, then there is no harm done him, and a proteſt is only to give a formal notice that the bill is not accepted, or is accepted and not paid; and if in ſuch caſe the damage amount to the value of the bill, there ſhall be no recovery, but otherwiſe he ought not to loſe his debt; but that ought either to appear by evidence upon *non aſſumpſit*, or by ſpecial pleading; and the act is very obſcurely and doubtfully penned, and we ought not by conſtruction upon ſuch an act to take away a man's right. And the judgmeut was affirmed *per totam curiam*.

215. In an action on the caſe on an inland bill of exchange brought by the indorſer againſt the drawer, it was objected, that there was no averment of the defendant's being a merchant; but it was anſwered and reſolved by the court, that the drawing of the bill was a ſufficient merchandiſing and negociating to this purpoſe. *Salk.* 125.

216. Acceptance of a bill of exchange after the day of payment paſt is uſual. L. *Raymond*, 364, 474.

So acceptance for the honour of the drawer, &c.

317. To

217. To intitle the party to an action at law in *England* againſt the acceptor of a bill, it matters not whether there be a proteſt; but to intitle the party to a recovery againſt the drawer beyond the ſeas or elſewhere, there muſt be a proteſt before a notary publick.

218. A bill may be accepted for part, when the party on whom it was drawn had no more effects of the drawer's in his hands, though whenever this happens, there muſt be a proteſt for non-acceptance, if not for the whole ſum, yet at leaſt for the reſidue; and after payment of ſuch part there muſt be a proteſt for the remainder, as the receiving part of the money upon a bill does no ways weaken it. *Trin.* 20. *Car.* II. in *B. R.*

219. It is aſſerted by *Marius*, *Scarlet*, *Molloy*, and others that have treated of bills of exchange, that any time before the money comes due, the drawer of a bill may countermand the payment although it hath been accepted, and this is uſually made before a notary, though if it comes only under the party's hand, they allow it to be ſufficient, and in caſe of diſcount, or payment before it is due, they ſuppoſe the acceptor liable to pay it again in caſe of a countermand; from all which I muſt diſſent, as this abſolutely overſets the validity of all acceptances.

220. When a bill beyond ſeas is accepted, and not complied with when due, the proteſt for non-payment by a notary is ſufficient to ſhew in court here, without producing the bill itſelf; but if a bill in *England* be accepted, and a ſpecial action grounded on the cuſtom be brought againſt the acceptor, at the trial the plaintiff muſt produce the bill accepted, and not the proteſt, otherwiſe he will fail in his action at that time; therefore it is moſt ſecure that a bill once accepted be kept, and only the proteſt for non-payment be remitted abroad.

221. If a bill is not accepted to be paid when due, but for a longer time, the perſon to whom the bill is made payable muſt proteſt the ſame for not being accepted according to the tenor, yet he may however admit the acceptance; nor can the acceptor, if he once ſubſcribes the bill for a longer time, revoke his acceptance, or blot out his name, although it is not according to the tenor of the bill; for by this act he hath made himſelf debtor, and owns the draught made by his friend upon him, whoſe right another man cannot give away, and therefore cannot diſcharge the acceptance; and this caſe will admit of two proteſts, if not three, *viz.*

1. One proteſt muſt be made for non-acceptance, according to the time the bill is payable at.
2. For non-payment when due according to the bill's tenor.
3. If the money be not paid according to the time that the acceptor ſubſcribed for.

222. A bill was drawn payable on the 1ſt of *January*, and the perſon to whom it was directed accepts it to pay on the 1ſt of *March*, with which the ſervant returns to his maſter, who, perceiving this enlarged acceptance, ſtrikes out the 1ſt of *March*, and puts in the 1ſt of *January*, and at that time ſends the bill for payment, which the acceptor refuſes; whereupon the poſſeſſor ſtrikes out the 1ſt of *January*, and inſerts the 1ſt of *March* again: In an action brought on this bill, the queſtion was, whether theſe alterations did not deſtroy the bill? and ruled, that it did not. *Per* L. C. J. *Pemberton* inter *Price & Shute*. *Paſc.* 33. *Car.* II. in *B. R.*

223. A bill of exchange, payable to a perſon or bearer, is not aſſignable, ſo as to enable the indorſee to bring an action, if payment be refuſed; but when it is made payable to a perſon or order an expreſs power is given thereby to aſſign, and the indorſee may maintain an action; and the firſt is a good bill between the indorſer and indorſee. 1 *Salk.* 126.

224. The acceptance of a bill, although after it is become due, is binding to the acceptants, an action is maintainable thereon; the effect of the bill being the payment of the money, and not the day of payment. *Carthew*'s Rep. 460.

225. When a bill of exchange is accepted, it is good ground for a ſpecial action upon the caſe, but it doth not make a debt, &c. 2 *Show.* 1.

226. *Indebitatus aſſumpſit* doth not lie againſt the acceptor of a bill of exchange, becauſe his acceptance is a collateral engagement, though it will lie againſt the drawer; and a general *indebitatus aſſumpſit* will not lie on a bill of exchange for want of a conſi-

deration;

deration; and therefore there muſt be a ſpecial action upon the cuſtom of merchants, or an *indebitatus aſſumpſit* againſt the drawer for money by him received to the plaintiff's uſe. 1 *Salk* 23 Ibid. 125.

227. In the caſe of *Bromwich* and *Lades*, it was ſaid by the chief juſtice *Treeby*, that bills of exchange were of ſuch general uſe and benefit, that upon an *indebitat. aſſumpſit*, a bill of exchange may be given in evidence to maintain the action; and by Mr. Juſtice *Powel*, that upon a general *indebitat. aſſumpſit*, for monies received to the uſe of the *plaintiff*, ſuch bill may be left to the jury to determine whether this was for value received or not. In this caſe the declaration was on the cuſtom of merchants, and a general *indebitat. aſſumpſit* thereon. See the declarations and exceptions to it, in caſe of *Bellaſis* and *Heſter*, in 1 *Lutwich*, 1589.

228. If a bill of exchange is drawn on two or more perſons in theſe terms, *To Mr.* A. B. *and* C. D. *merchants*, in London, they ought both to accept the bill; for the acceptance of only one is not complying with its tenor, and it ſhould be proteſted; but if it come directed to *A. B.* and *C. D.* or to either of them; or thus, To *A. B.* or in his abſence to *C. D* in this caſe, the bill being accepted by either, it is ſufficient.

229. Bankers' or goldſmiths' notes are not to be accounted caſh till received. As for example, *A.* draws a note upon a goldſmith, and ſends a ſervant to receive the money, and to inveſt it in Exchequer bills; the ſervant got *B.* to give him money for the note, with which he purchaſed the Exchequer bills ordered; and two days afterwards the goldſmith failed; it was adjudged that *A.* muſt anſwer the money to *B.* as the property of the note was not transferred to *B.* there being no indorſement; and he could not have ſued upon it, it being only in the nature of a pledge or ſecurity to him. *Luc.* 109.

It was the received opinion, and certainly founded on the cuſtom of merchants in the city of *London*, that draughts on bankers, payable to *A. B* or bearer on demand, ought to be carried for payment on the very day they are received, and when it is conſidered that great part of the payments for the purchaſe of ſhares in the public funds or ſtocks are paid by the purchaſers in draughts upon their bankers at the inſtant of making the transfer of the ſtock, I ſtill think it adviſeable to take the draughts for payment without delay, and not to part with the receipt for the transfer till the banker has honoured the draught.

But in point of law, it has been lately ſaid from the bench, that if the poſſeſſor of a draught on a banker does not keep it longer than *twenty four hours* after he receives it, before he tenders it for payment, and within that time the banker ſtops payment, the drawer is obliged to pay the money. The caſe was as follows. The plaintiff took the defendant's draught on his bankers, *Brown and Collinſon*; the next morning they ſtopt payment, and the defendant refuſes to give caſh for his draught, alledging, that if the plaintiff had preſented it for payment as ſoon as poſſible after he received it, the bankers would have paid it. Earl *Mansfield* obſerved, that the whole reſted upon cuſtom; and the queſtion to be determined was, Whether the plaintiff was obliged to go to the bankers on the day he received the draught, for if he had, it appeared he would have been paid? His lordſhip ſaid, it was unreaſonable to ſuppoſe, that a tradeſman ſhould be compelled to run about the town with half a dozen draughts from *Charing Croſs* to *Lombard ſtreet*, and other places on the ſame day. The jury were to conſider that *twenty-four* hours was the uſual time allowed, and the plaintiff kept it no longer from being paid, for the next morning the town was alarmed by the bankers ſtopping payment. The jury however found for the defendant —*Sittings at Guildhall after Eaſter Term*, 1782. And upon a new trial, the Court of King's Bench confirmed the verdict.

230. A note is no payment where there was an original and precedent debt due, but ſhall be intended to be taken upon condition that the money be paid in a convenient time; but the taking a note in writing for goods ſold may amount to payment of the money, becauſe it is part of the original contract. *Mich.* 2. *Ann.* 3 *Salk.* 118.

231. A ſervant of Sir *Robert Clayton* and Mr. Alderman *Morris*, but at that time actually gone from their ſervice, took up two hundred guineas of Mr. *Monck*, a goldſmith (who knew nothing of his being diſcarded) without any authority from his *quondam* maſters, who refuſing to ſatisfy Mr. *Monck* for the ſame, he brought an action againſt Sir *Robert* and Mr. *Morris*, and being tried at *Guildhall*, it was ruled *per Keeling* Chief Juſtice, that they ſhould anſwer, and there was a verdict for the plaintiff; and though there

there were great endeavours uſed to obtain a new trial, yet it was denied; the courts at *Weſtminſter* being fully ſatisfied that they ought to anſwer, for this ſervant had frequently received and paid caſh for them; and they were obliged to comply, and paid the money.

232. A perſon who is no merchant, drawing a bill of exchange, makes him within the cuſtom of merchants as to that bill. 2 *Vent.* 310. *Witherley* v. *Sarsfield.*

233. If the drawer mentions, *for value received*, he is chargeable at common law; but if no ſuch mention, then you muſt come upon the cuſtom of merchants only. 1 *Show.* 125.

234. Concerning a bill of exchange being extended for the king, judgment for the plaintiff notwithſtanding. *Evans* v. *Cramlington.* 2 *Vent.* 310. *Carth.* 5. *Show.* 264.

235. Part of a bill of exchange cannot be aſſigned ſo as to entitle the indorſee to an action; if it were otherwiſe the party might be vexed with as many actions as the holder of the bill ſhould think fit. *Hawkins* v. *Gardner.* *Carth.* 466. Caſes *B. R.* 213.

236. It is not neceſſary to prove a proteſt made by a publick notary, for that would tend to deſtroy commerce, and publick tranſactions of that nature. 3 *Sal.* 70.

237. *I promiſe to pay the bearer ſo much money on demand*, is no bill of exchange, and declaring on the cuſtom will not make it ſo. Caſes *B. R.* 346. 380.

238. A goldſmith or banker's note, accepted in payment, ſhall not be a payment, if the party who gave it knew the goldſmith to be in a failing condition, for ſuch knowledge makes it a fraud. Ditto, 517.

239. Infancy pleaded by the drawer of a bill of exchange and held a good bar, being drawn in the courſe of trade, and not for neceſſaries. *Williams* v. *Harriſon.* *Carth.* 160. 3 *Salk.* 197.

240. An action was brought upon a note, for the payment of ſixty guineas when the defendant ſhould marry ſuch a perſon, in which the plaintiff declared as upon a bill of exchange, ſetting forth the cuſtom of merchants; and it was held that to pay money upon ſuch a contingency cannot be called trading, and therefore not within the cuſtom of merchants; and judgment was given for the defendant. *Pearſon* v. *Garret,* 4 *Mod.* 242 *Comb.* 227 *Skin.* 398.

241. A note was in this form: *I promiſe to pay* J. S. *or order, the ſum of one hundred pounds, on account of wine had of him.* J. S. indorſed it, and the indorſee brings an action againſt the drawer, and declares upon the cuſtom of merchants; and doubted by *Holt* whether action would lie, and adviſed with merchants, who declared that ſuch notes had been in uſe thirty years, and that they looked upon them as bills of exchange, but *Cur. adviſare vult.* *Buller* v. *Crips.* 6 *Mod.* 29.

Holt declared he remembered when actions on bills of exchange firſt began. Ibid. *Williams* v. *Williams.*

242. A note drawn by *J. P.* whereby he promiſed to pay 12*l.* 10*s.* to *J. W.* on a day certain, and he indorſed the note for value received to *D. F.* who indorſed it to the plaintiff for value received, who brought an action againſt *J. W.* ſetting forth the cuſtom of merchants; *and held the action lay.* Carth. 269.

243. By this ſtatute it is enacted, that if any perſon ſhall forge, or procure to be forged, or aſſiſt in forging, any *(inter alia)* bill of exchange, promiſſory note for payment of money, indorſement, or aſſignment of any bill of exchange, or promiſſory note for payment of money, or any acquittance, or receipt for money or goods; or ſhall utter or publiſh, as true, any ſuch forged bill, &c. knowing the ſame to be forged, with an intent to defraud any perſon, every ſuch offender ſhall be guilty of felony without benefit of clergy. 2 *Geo.* II. Cap. 25. S. 1.

244. And, by this ſtatute, if any perſon ſhall falſly make, alter, forge, or procure to be falſly made, &c. or aſſiſt in falſly making, &c. any acceptance of any bill of exchange, or the number or principal ſum of any accountable receipt for any note, bill, &c. or any warrant, or order for payment of money, or delivery of goods, or ſhall utter or publiſh any ſuch falſe acceptance, bills, &c. with intent to defraud any perſon; every ſuch offender ſhall ſuffer as a felon, without benefit of clergy. 7 *Geo.* II. Cap. 22.

Notwithſtanding theſe poſitive laws, the abſurd and miſchievous cuſtom of making inland bills payable to fictitious perſons; that of one perſon indorſing another's name; and even drawing in feigned names had prevailed ſo generally, and got to ſuch a height, probably

probably from an idea that an indictment for felony would be eaſily quaſhed, upon proving that no fraud was intended—as to make it neceſſary to proceed with the utmoſt caution, and at the ſame time with becoming firmneſs in the courts of law, to ſupport the honour and credit of mercantile tranſactions within the realm, and the dignity of the legiſlature, whoſe ſtatutes were thus openly violated with impunity.

From the rule in law therefore, that in an action againſt a drawer or acceptor of a bill, payable to order, there muſt be proof of the ſignature of the firſt indorſer, and of all thoſe to whom an indorſement has been ſpecially made: has ariſen the queſtion which has ſo long agitated the commercial world on the ſubject of *indorſements, in the name of fictitious payees. Kyd.* p. 137.

A BILL payable to the order of a fictitious perſon, and indorſed in the fictitious name, is not a novelty among merchants and traders. A caſe of that kind appears to have been brought to trial upwards of twenty years ago. It was an action by the indorſee againſt the acceptor of a bill of exchange, payable to *Butler* and co. and their order, and indorſed in that name. The plaintiff was ſo far from proving it to have been indorſed by any perſons uſing that firm, that his own witneſſes ſaid, they believed it was indorſed by *Cox*, the drawer. It alſo appeared, that there was a houſe of *Butler* and co. with whom *Cox* had dealings; but it was proved that the bill in queſtion, had never been in their hands; it was admitted that the bill was a true one, and the defendant had regularly accepted it; it appeared further, that the acceptor had *expreſsly promiſed to pay*, at the time the holder had diſcounted the bill; but it was inſiſted, that the indorſement being fictitious, the plaintiff had failed in making out an eſſential part of his title. Lord *Mansfield* obſerved, that the intent of the bill was only to enable *Cox* to raiſe money, and the reaſon why it was not made payable to his order, was, that there were other bills payable at that time to his order, and if this had been ſo too, there would have been too many in the ſame name in circulation at the ſame time, which would have had the appearance of *fictitious credit*; that names were often uſed of perſons who never exiſted: the defendant by his acceptance, and promiſing expreſsly to pay the bill, had enabled *Cox* to put it in circulation, and having ſo done, he ſhould not avail himſelf of an objection that the plaintiff had not completely made out his title. *Stone* v. *Freeland, B. R.* Sittings at Guildhall after *Eaſter* Term, 1769.

But in the years 1786, 1787, and 1788, two or three houſes connected together in trade, entering into agreements far beyond their capitals, and apprehending that the credit of their own names would not be ſufficient to procure currency to their bills, adopted, in a very extenſive degree, a practice, which before had been found convenient on a ſmaller ſcale. So long as the acceptors or drawers could either procure money to anſwer their bills, or had credit enough with the holder to have them renewed, the ſubjects of theſe fictitious indorſements never came in queſtion. But when the parties could no longer ſupport their credit, and a commiſſion of bankruptcy became neceſſary, the other creditors felt it their intereſt to reſiſt the claims of the holders of theſe bills, and inſiſted that they ſhould not be admitted to prove their debts; becauſe they could not comply with the general rule of law, which requires proof of the hand-writing of the *firſt* indorſer. The queſtion came before the Lord Chancellor by petition: He directed trials at law, and ſeveral have been had: Three againſt the acceptors in the King's Bench, and one againſt the drawer in the Common-Pleas; though not all expreſsly by that direction.

In the firſt caſe againſt the acceptor, beſides the general counts for money *paid* by the plaintiff to the defendant's uſe, and *money had and received* by the defendants to the plaintiff's uſe, there were alſo two ſpecial counts laid on the bill itſelf. The firſt was in the terms of the bill—" that the defendant and others drew a bill of exchange on the defendant, payable to *Griſſon* and co. or order, three months after date, which the defendant accepted; and that *Griſſon* and co. indorſed it to *Lewis* and *Potter*, who indorſed it to the plaintiff. " The ſecond count ſtated it to be, " a bill drawn as above in favour of certain perſons trading under the firm of *Lewis* and *Potter*, or order, and indorſed by *Lewis* and *Potter* to the plaintiffs." The circumſtances proved at the trial were theſe—That there was a houſe of trade at *Nottingham* under the firm of *Harris, Harries* and *Plant*, of which the defendant was one of the partners; and that the defendant *alone* carried on buſineſs in *Wood-ſtreet*, and reſided in *London*; that the body of the bill, as well

well as the ſignatures of the drawers and acceptors, were in the *hand-writing* of the defendant: that no ſuch houſe of trade as that of *Grigſon* and co. was concerned in the tranſaction, but that the defendant had drawn the bill payable to *Grigſon* and co. at the requeſt of *Lewis* and *Potter*; that the indorſement in the names of *Grigſon* and co. was fictitious, and that before the bill came due, the defendant knew that to be the caſe; but it did not expreſsly appear, whether he knew it, at the time the bill was drawn: that the indorſement of *Lewis* and *Potter* was in the hand-writing of one of the partners of that houſe, and that they received the bill from the defendant and delivered it to the plaintiffs: that the value of the bill was paid to the houſe of *Lewis* and *Potter* in draughts on bankers, which were afterwards paid in caſh; and that the defendant had credit given him in account with *Lewis* and *Potter* for the value of the bill.

To this evidence, the defendant's counſel *demurred*, as not ſupporting any count in the declaration.

Lord Kenyon, in giving the opinion of the court, ſaid, that in deciding this particular caſe, they did not wiſh to have it underſtood that they meant to infringe on the rule as applicable to caſes in general; for that generally ſpeaking, there was no doubt but the indorſee of a bill of exchange, payable to order, muſt in deriving his title, prove the hand-writing of the firſt indorſer. But that this deciſion proceeded on the ſpecial circumſtances of this particular caſe; that the defendant, at the time of entering into this engagement, knew that there were no ſuch perſons as *Grigſon* and co. and, therefore, that in point of formal derivation of title, that which is uſually done, could not be done in this caſe. That on the firſt count of this declaration, the opinion of the court did not proceed, neither was it neceſſary to ſay any thing on the ſecond; though if it had been neceſſary to reſort to that, he himſelf had an opinion on it. But the counts on which the judgment of the court was given, were thoſe for *money paid* and *money had and received*. In Lord Chief Juſtice *Raymond*'s time it had been decided, that a general *indebitatus aſſumpſit* might be maintained to recover money for the value of a bill of exchange, which was not paid. That caſe, indeed, had been on a bill payable to bearer; but the doctrine of that caſe was a ſufficient foundation for the opinion of the court in the preſent, and had been recognized in a ſubſequent caſe, by each of the judges of this court. "That to give ſuch a bill is, as it were, an aſſignment of ſo much property, which becomes money had and received, to the uſe of the holder of the bill." Here the defendant, being a debtor to the houſe of *Lewis* and *Potter*, drew a bill, which he delivered to them, and drew it in terms, which could not be proved in a formal manner: he was not only privy to the tranſaction, but the very negociator of it; and by drawing it, put himſelf into a *ſituation* to pay, what he was in conſcience *bound* to pay; therefore it was an appropriation of ſo much money to be paid to the perſon who ſhould become the holder of the bill. *Grant* v. *Vaughan*.

In the next caſe, the firſt count ſtated the bill of exchange to be drawn by *Liveſay* and co. on the defendants in favour of *Lawrence Aſhworth*, who was alſo a fictitious perſon, and by him indorſed to the plaintiffs. The ſecond count ſtated the bill to be payable to the *bearer*; the third payable to the order of the drawers, and indorſed by them to the plaintiffs; then followed the money counts. An attempt was made on behalf of the defendants, to diſtinguiſh this caſe from the former, becauſe there was no evidence that in point of fact, they received any value for the bill, and that therefore, they could not be liable on the money counts. But the court ſaid, that the acceptance of the defendants was alone evidence that they had received value from the drawers, and that on the demurrer to evidence, the court might draw the ſame inference which would have been drawn by the jury. Three of the court alſo *thought*, that the plaintiffs might recover on the ſecond count, which ſtated the bill as drawn payable to *bearer*. *Vere* v. *Lewis*.

The next caſe was againſt the acceptor, having alſo a count in which the bill was ſtated to be drawn payable to *bearer*; and the court being of opinion that it was decided by the foregoing, gave judgment for the plaintiff without hearing any argument, and added, they underſtood it had been agreed to turn it into the ſhape of a ſpecial verdict, that it might be carried up to the Houſe of Lords. On the authority of theſe two laſt caſes againſt the acceptor in the King's Bench, was decided the caſe againſt the drawer in the Common Pleas, the circumſtances of which we ſhall here recite. *Minot* v. *Gibſon*.

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The plaintiff ſtated that the defendant, on the 5th of *April*, 1788, drew a bill of exchange, directed to *Liveſay* and Co. by which he required them, three months after date, to pay to *Mr. George Chapman* or order 1551*l.* value received, and delivered the ſaid bill to them, and "authoriſed them to negociate and indorſe the ſame, in the name of *George Chapman*, and therby to raiſe money thereon," for the uſe of the ſaid perſons ſo uſing the names, ſtile, and firm of *Liveſay* and Co. and then averred, that when the ſaid bill was ſo made as aforeſaid, or at any time afterwards, "there was no ſuch perſon as *George Chapman*, the ſuppoſed payee in the ſaid bill of exchange, but that the ſaid name was merely fictitious," to wit, at *London*, &c. which ſaid bill of exchange afterwards, to wit, &c. by one "*Andrew Goodrick*, being a perſon thereunto in that behalf lawfully authorized by *Liveſay* and Co. upon ſight thereof was accepted," according to the uſage and cuſtom aforeſaid. And the ſaid perſons ſo uſing the names of *Liveſay* and Co. being ſo authorized as aforeſaid, afterwards and before the payment of the ſum of money therein contained, or if any part thereof, and before the time thereby appointed for ſuch payment, to wit, &c. "negociated and indorſed the ſaid bill of exchange, in and with the name of the ſaid *George Chapman*, and by that indorſement, in the name of the ſaid *George Chapman* appointed the contents of the ſaid bill of exchange to be paid to the ſaid plaintiffs, and thereby raiſed money thereon, for the uſe of the ſaid perſons ſo uſing the names, &c. of *Liveſay* and Co." and then and there delivered the ſaid bill of exchange ſo indorſed to the ſaid plaintiffs, "who thereupon on the credit thereof, advanced to the ſaid perſons," ſo uſing the name, &c. of *Liveſay* and Co. the ſum of money in the bill mentioned. *Collins* v. *Emett*.

The circumſtances ſtated in a ſpecial verdict on this caſe were theſe, that *Emett*, who was a partner with *Liveſay* and Co. in the ſpinning of cotton at *Clithero*, wrote his name on a blank piece of paper, with a ſhilling ſtamp on it; and delivered it to *Liveſay* and Co. for the purpoſe of drawing a bill of exchange, for ſuch ſum, payable at ſuch time, and to ſuch perſon or perſons as they ſhould think fit.

That *Liveſay* and Co. on the 5th of *April*, 1788, drew on this paper, above the name of *Emett*, a certain writing, directed to *Liveſay* and Co. in words and figures following, viz. *Clithero*, *April* 5th, 1788, 1551*l.* "Three months after date, pay to Mr. *George Chapman* or order, fifteen hundred and fifty-one pounds, value received, as adviſed, *John Emett*." That the occaſion and manner of giving this paper writing were as follow: on the fifth of *April*, *Liveſay* and Co. were indebted to *Thomas Jeffery* in the ſum of 1512*l.* 9*s.* on a bill of exchange, which became due that day, and which had been previouſly given for goods ſold by *Jeffery* to them. One *Richard Collis*, clerk to *Jeffery*, on that day applied to the houſe of *Liveſay* and Co. for payment of that bill: he there ſaw *Anſtie*, one of the partners, who informed him, that they could not conveniently then pay the money, but requeſted him to take a bill on their houſe for the ſum, at three months date, and the intereſt in the mean time, and gave him the blank above-mentioned, with the name of *Emett* written on it, to be filled up by one of the clerks of the houſe.

That one *Ludlow*, a clerk to *Liveſay* and Co. filled up the paper, in the manner as above ſet forth, that immediately afterwards it was carried to *Andrew Goodrick* another clerk of the houſe, who was authoriſed by *Liveſay* and Co. to accept it, which he accordingly did, in the names of *Liveſay* and Co. that with the authority of *Liveſay* and Co. the name of *George Chapman* was then indorſed on the ſaid paper writing, which being ſo filled up, accepted, and indorſed, was then delivered to the ſaid *Collis*, who then delivered up the bill for 1512*l.* 9*s.* to the ſaid *Liveſay* and Co. That the ſaid *Thomas Jeffery* afterwards negociated the ſaid paper writing with the plaintiffs, and received the full amount from them, only deducting a diſcount at four and a half *per cent.* and delivered the ſame to the ſaid plaintiffs. That the ſame was duly preſented for payment to *Liveſay* and Co. who refuſed to pay it, of which *Emett* had due notice. That there was no ſuch perſon as *George Chapman*, the ſuppoſed payee of the ſaid paper writing, being merely fictitious: That *Emett* gave no further or other authority than as before ſet forth, and knew nothing of this tranſaction: That the plaintiffs had then no knowledge, that the ſaid *George Chapman* was a fictitious perſon, or of the circumſtances under which the ſaid paper writing was drawn, accepted and indorſed; but that the ſaid *Thomas Jeffery* had full knowledge of the whole of the ſaid tranſactions.

In the pronouncing the judgment of the court of Common-Pleas on this caſe, Lord

Loughborough ſaid, the ſpecial circumſtances above ſtated in the declaration would, in his opinion, have been ſufficient to have entitled the plaintiff to recover, if the caſe ſtated in the ſpecial verdict had not in two or three inſtances, varied from them.

The caſe of *Minet* and *Gibſon* has been argued before the Houſe of Lords, and now waits the opinion of the judges. The circumſtances ſtated in the ſpecial verdict are theſe:

Liveſay and Co. made a certain inſtrument in writing directed to the defendants, requiring them, three months after date to pay to *J. White* or order, 721*l.* 5*s.* *Liveſay* and Co. knew, at the time of making it, that no ſuch perſon exiſted as *J. White*, mentioned in the bill; an indorſement in writing was afterwards made by *Liveſay* and Co. purporting to be the indorſement of *J. White*, and requiring the contents of the bill to be paid to *Liveſay* and Co. or their order: *Liveſay* and Co. afterwards indorſed, by *A. Goodrick*, by procuration of *Liveſay* and Co. to the plaintiffs for a full and valuable conſideration, when the plaintiffs became the holders of the bill; the defendants afterwards accepted, with the full knowledge that no ſuch perſon as *J. White* mentioned in the bill, exiſted, and that the name of *J. White*, ſo indorſed thereon, was not in the hand-writing of any perſon of that name. The defendants at the time of making and accepting the bill had not, nor had they at any time ſince, any money, goods or effects, of or belonging to *Liveſay* and Co. or of the plaintiffs, in their hands.

Beſide the money counts, the declaration contained ſeven ſpecial counts on the bill. The firſt, ſtated that *Liveſay* and Co. made a bill of exchange, directed to the defendants, requiring them, three months after date, to pay 721*l.* 5*s.* to *John White*, or order; *Liveſay* and Co. well knowing that no ſuch perſon as *J. White* exiſted; on which bill an indorſement was made, purporting to be the indorſement of *J. White* named in the bill, requiring the contents to be paid to *Liveſay* and Co. or order; that *Liveſay* and Co. by one *Abſalom Goodrick*, by procuration of *Liveſay* and Co. indorſed to the plaintiffs, and that the defendants accepted it; knowing that no ſuch perſon as *J. White* exiſted, and that the name of *J. White*, ſo indorſed, was not the hand-writing of any perſon of that name.

The ſecond count, after ſtating the drawing of the bill as in the firſt, proceeded thus; *Liveſay* and Co. knowing that *J. White* was not a perſon dealing with or known to *Liveſay* and Co. and uſing the name of *J. White* on the bill as a nominal perſon only, and intending not to deliver the ſame to him, or to procure the ſame to be actually indorſed by him: on which bill a certain indorſement was made, requiring the payment to be made to *Liveſay* and Co. and that *Liveſay* and Co. indorſed to the plaintiffs, without having delivered the bill to *J. White*, and without any actual indorſement or aſſignment of the bill by *White*.

The third count ſtated, that the bill was made payable to themſelves, *Liveſay* and Co. by the name and deſcription of *J. White*.

The fourth, treated it as a common bill, payable to *J. White*, or order, and ſtated that *J. White* indorſed it to the plaintiffs.

The fifth, as payable to bearer, and that the plaintiffs were the bearers.

The ſixth payable to *J. White*, or order, with an averment that, when the bill was made, there was no ſuch perſon as *J. White*, the ſuppoſed payee, but that name was merely fictitious; by reaſon whereof the ſum mentioned in the bill became and was payable to the bearer thereof; according to the effect and meaning of the bill, averring alſo, that the plaintiffs were the bearers and proprietors thereof.

The ſeventh count ſtated, that there was a partnerſhip, or houſe, of certain perſons uſing trade, as well in the name and firm of *Liveſay* and Co. as in the name and firm of *J. White*; that the laſt-mentioned perſons made a certain other bill, the hand of one of them on their joint account, and in their co-partnerſhip name and firm of *Liveſay* and Co. being thereto ſubſcribed, and directed it to the defendants, requiring them, three months after date, to pay to the ſaid laſt-mentioned co-partners, by the name of *J. White*, or order; 721*l.* 5*s.* and that the ſaid laſt-mentioned co-partners afterwards, by a certain indorſement in writing, appointed the contents to be paid to the plaintiffs, and delivered the bill, ſo indorſed to them.

One obſervation naturally preſents itſelf to the mind on the inſpection of this record: The two firſt counts ſtate in ſubſtance, all the circumſtances found by the ſpecial verdict, yet judgment was given for the plaintiffs, not on one of theſe, but on the fifth count, which ſtates the bill as payable to bearer: It appears ſingular, that a court of juſtice ſhould decide, that a man ſhould have a right to recover on a general count, ſupported by

by ſpecial circumſtances given in evidence, and that theſe very circumſtances, when ſtated ſpecially on the record, ſhould not be conſidered as ſufficient to ſuſtain the action.—It ſeems impoſſible to account for this apparent inconſiſtency in any other way than by adverting to the declaration in the caſe of *Vere* and *Lewis*, and the judgment given upon it; in that, there is no count which ſtates the circumſtances ſpecially; but the court being of opinion, that the plaintiff was entitled to recover, thought the count which ſtates the bill as payable to bearer, was a ſufficient foundation for their judgment, and a like count appearing in the caſe of *Minet* and *Gibſon*, they gave judgment on that, without adverting to the two counts, which ſtated the ſpecial circumſtances of the caſe.

This inconſiſtency being pointed out by the counſel for the plaintiff in error, in the Houſe of Lords, as one ground of impeaching the judgment of the court below, it was obſerved in anſwer, that there being in fact, but one cauſe of action, the plaintiff could have judgment only on one count, and conſequently judgment was neceſſarily entered for the defendant on all the reſt; and if upon the whole record there appeared a ſufficient cauſe of action, but the judgment was entered on the wrong count, the court of error would rectify it.

Independently of the rule which requires the proof of the hand-writing of the firſt indorſer, one preliminary objection has been made to the holder's right of recovery in any form of action againſt the drawer or acceptor: The very act of indorſing on a bill, a name which belongs to nobody, is, it is ſaid, in itſelf a *felony*; it has a general tendency to defraud, though the fraud be pointed againſt no particular individual; and in all caſes which have ariſen, has actually defrauded the holder of the bill, by impoſing on him the idea of a ſecurity which does not exiſt. The act too of ſending the bill into circulation with a fictitious name on it, it is ſaid, is a felony in him, who is privy to the tranſaction.

Whether each or either of theſe acts be in reality a felony, admits of conſiderable doubt, and is one point "on which the opinion of the judges is required by the Houſe of Lords." Should that opinion be given in the affirmative, the advocates on the part of the defendant to the action inſiſted, that the holder of the bill could not recover againſt either the drawer or the acceptor, becauſe he could not make title, through the medium of a felony in another: a felony contaminates a tranſaction, and the civil remedy is completely merged in it, by the policy of the law, to prevent, as much as poſſible, crimes from going unpuniſhed.

The caſe of *Peacock* and *Rhodes* they ſaid, could not be cited in oppoſition to this doctrine; for in that caſe, the bill having been regularly indorſed by the payee, and having, though after having been ſtolen, come to the hands of the plaintiff for a good conſideration, he was only under the neceſſity of proving the hand-writing of the firſt indorſer, and was not bound to make any part of his title through the perſon who ſtole the bill: But here the plaintiff deriving his title through the indorſement which was a forgery, was neceſſarily barred of his action. To this it was anſwered, that this propoſition with reſpect to the effect of the felony was not true to ſuch an extent; it was true indeed, that a civil action could not be maintained, where the cauſe of action was grounded wholly on an act of felony; as if one ſtole a horſe or money, the owner could not maintain trover, or money had and received againſt him, becauſe the civil remedy was merged in the felony; if the horſe came into the hands of another perſon, under circumſtances which would not amount to a change of property, the original owner might recover him from that perſon; though, therefore, the felony might be an anſwer to an action againſt either the drawer or acceptor, where it appeared the defendant was guilty of the felony; yet that would not preclude the plaintiff from recovering againſt the other, if he did appear to be guilty.

The advocates on the other ſide of the queſtion in the Houſe of Lords, profeſſing not to impeach the judgment of the Common-Pleas, in the caſe of *Collins* and *Emett*, in which the defendant was perfectly innocent of the ſuppoſed felony, were ſatisfied to maintain, that where the fact of the felony could be fixed on the defendant, that was a bar to a civil action.

In a tranſaction of this kind, it is apprehended, that, whoever in fact makes the fictitious indorſement, both the drawer and acceptor muſt in general be guilty of publiſhing the bill with that indorſement on it, knowing it to be fictitious.

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In ſuch a caſe, whether this amounts to a felony, is certainly a preliminary queſtion; for, though independently of that queſtion, the plaintiff might be entitled to recover, yet if in fact, it ſhall be decided to be felony, he muſt neceſſarily be precluded from his action, becauſe if he were to recover at all, he muſt recover againſt the felon himſelf.

But it may happen that the acceptor may not know that the bill he accepts, is attended by any circumſtance different from thoſe attending bills in the uſual courſe of buſineſs; as where the bill is brought him for acceptance by a third perſon, either before the indorſement is made or afterwards, without intimation of the payee's being fictitious: The drawer too, even in common caſes, may be ſo far unaffected with the felony, that he may not be guilty of publiſhing the bill with a falſe indorſement on it, knowing it to be falſe, for it may be carried out of his hands before the indorſement is made: and in ſome caſes, as in that of *Collins* and *Emett*, the perſon appearing as the drawer may be perfectly ignorant of the tranſaction.

In any of theſe caſes therefore, in which the defendant may appear to have acted without knowledge of the circumſtances, the queſtion of felony cannot be conſidered as preliminary to the deciſion on the plaintiff's right of action: If the adherence to the rule which requires proof of the hand-writing of the firſt indorſer, be ſo rigid, that the plaintiff can in no form of action recover without it, that is, of itſelf ſufficient without the intervention of the felony: If an action in any form can be ſuſtained, in which that rule may be diſpenſed with, then it is not through the felony that the plaintiff derives his title, and conſequently he cannot be affected by the deciſion of that queſtion.

If this reaſoning be well founded, it follows that whatever that deciſion may be, the general queſtion is ſtill open to diſcuſſion; if in the affirmative, then in thoſe caſes only where the defendant is innocent, if in the negative, then in all caſes.

In ſupport of the judgment on the fifth count, which ſtates the bill as being drawn payable to bearer, it has been urged that in ſtating an agreement or a deed in pleading, it is ſufficient to ſtate the legal operation of it, though there might be a verbal variance between it and the difference itſelf: as where a leaſe is made jointly by *B.* tenant for life of *C.* and him in remainder or reverſion, in fee; during the life of *C.* this may be ſtated as the leaſe of tenant for life, and the confirmation of him in remainder or reverſion; that being then the legal operation of the deed: and, for the ſame reaſon, after the death of *C.* it may be ſtated as the leaſe of the perſon in remainder or reverſion, and the confirmation of *B.*

So here, it was ſaid, though the bill appeared on the face of it, to be payable to order, yet as no body exiſted who could give ſuch order, the engagement muſt be to pay the bill, which was, in effect, to render it payable to the bearer.

If, however, recourſe muſt be had to the intention of the parties, it would ſeem that it is only in the caſe of a blank indorſement in the name of the fictitious payee, that the bill muſt be conſidered as in effect payable to bearer; where the indorſement is ſpecial, as it was in the preſent caſe, the intention to be attributed to the parties is, that it ſhould be payable to the order of him to whoſe order it is made payable by the fictitious indorſement, and then the third count would have been better adapted to ſupport the judgment than the fifth.

But it was objected that this argument was not applicable to the preſent caſe; for though it muſt be admitted that a deed muſt be ſtated according to its legal operation; yet that operation muſt appear on the face of the deed itſelf, without any collateral circumſtances to explain it, contrary to the evident meaning of the words.

With reſpect to the joint leaſe of tenant for life, and him in remainder or reverſion, if the ſeveral intereſts which they had in the land did not appear in the deed, yet the operative words of the leaſe were not of that fixed and determinate meaning that they could not admit of a different conſtruction, if collateral circumſtances require it, in order to give them effect: But the words "payable to order" and "payable to bearer" were ſo peculiarly appropriated to the diſtinct ſpecies of bills in which they were reſpectively uſed, that the one could by no poſſibility be conſtrued to mean the other.

A ſtill ſtronger objection to the judgment's being ſupported on this count, ariſes from a queſtion put to the counſel by the lord chancellor, whether an action could be

maintained on this bill againſt an indorſer. That an action may be maintained againſt an indorſer of ſuch a bill can admit of no doubt: It is from the frame of it payable to order, and transferable by indorſement: and in an action againſt an indorſer, no queſtion could ariſe about the fictitious payee, becauſe, as will be ſeen hereafter, in that action the plaintiff derives no part of his title, through any of the parties to the bill who proceeds the defendant: But a bill payable to bearer, being transferable by delivery, cannot regularly be indorſed; and it ſeems, from the queſtion, to have been ſuppoſed that no action could be maintained againſt the indorſer; though no doubt was entertained but that it might, even when it was held that a bill payable to bearer could not be the ſubject of an action by the indorſee, againſt the acceptor or drawer. If therefore, the judgment were affirmed on this count, it would follow that the ſame inſtrument muſt, in one caſe, be conſidered as a bill payable to bearer, and in another, as a bill payable to order, both of which it cannot be. But the difficulty ſuggeſted with reſpect to the period when the bill ſhall be ſaid to ceaſe to operate as payable to bearer, and aſſume the character of a bill to order, admits of an eaſy ſolution: As againſt the drawer and acceptor it operates as the one; as againſt the indorſer, it operates as the other.

So general ſeems to be the opinion that there ought to be a ſtrict adherence to the rule which has given riſe to this queſtion, that the count which ſtates the bill in its own terms, appears to have been abandoned on all ſides: The plaintiff's counſel in the caſe of *Tatlock* and *Harris* abandoned it; the advocates on the ſame ſide in the Houſe of Lords abandoned it: The court of King's-Bench profeſſed, that on it their opinion did not proceed; and the lord chancellor in his addreſs to the houſe on the ſubject of the queſtions to be referred for the opinion of the judges, ſeemed to think it could not be ſupported by the ſpecial verdict.

One general objection was made to all thoſe counts which were founded on the bill itſelf: It is only in favour of the cuſtom of merchants that the practice is founded of declaring on thoſe inſtruments as ſpecialties, and if ſuch a bill was not within the cuſtom of merchants, then the plaintiffs could not recover on thoſe counts: That ſuch a bill was not within the cuſtom of merchants, it was argued, appeared from this; that in no book on the ſubject was there to be found any alluſion to a bill of this kind; the uſage had provided, and the law had acknowledged two ſorts of bills, which were ſufficient to anſwer every purpoſe of trade, where the parties had no ſiniſter view; if it was wiſhed to facilitate the circulation of the bill, it might be made payable to bearer; if to confine it within certain limits, it muſt be made payable to order; but this was a new invention to enable men to raiſe money by a fraud, and it could not be pretended, that this was within the cuſtom of merchants.

To this it was anſwered, that the cuſtom of merchants is not to be confined to thoſe particulars which are to be found in any mercantile book; nor is the novelty of the thing a ſufficient reaſon to reject it; it had not been done all at once; that every thing which makes a part of the law and cuſtom of merchants at this day, was eſtabliſhed: it was not without conſiderable ſtruggles that bills, payable to bearer; obtained the ſame privileges as thoſe payable to order: new facts laid the foundation of new rules; and unleſs the deciſion on the queſtion of felony could preclude all further diſcuſſion, there could be no inconvenience in its being determined now for the firſt time, that where a bill was drawn in the name of a fictitious payee, and accepted, the drawer and acceptor ſhould by the cuſtom of merchants, be anſwerable for the money to a holder by a fair conſideration.

That ſuch a holder, in ſubſtantial juſtice, ought to recover againſt either the drawer or the acceptor, there can be no doubt: He has parted with his property, on the faith of their ſecurity; and it is not very gracious in them to tell him, that becauſe, by their contrivance perhaps, he has one ſecurity leſs than he ſuppoſed, he ſhall not have the advantage of thoſe which really exiſt.

Such is the ſubſtance of the arguments on both ſides of this important cauſe, and as far as I can recollect, the points propoſed for the opinion of the judges are theſe. *Kyd* on the Law of Bills of Exchange, 8vo. *London*, 1790. A moſt valuable Tract, as it includes the arguments in the lateſt caſes decided by our Courts of Juſtice.

Firſt,

Firſt, Whether the publication of the bill by the defendant with the fictitious indorſement on it, he knowing at the time that it was fictitious, amounts to a felony?

Secondly, If that be not felony, whether the facts found by the ſpecial verdict ſupport the judgment on the count, which ſtates the bill as payable to bearer?

Thirdly, If judgment on that count cannot be ſupported, whether it can be ſupported by any other count founded on the bill as a ſpecialty?

Fourthly, Whether on any of the other counts which ſtate all the particular circumſtances of the caſe, the plaintiff be entitled to recover?

It was alſo ſuggeſted by the lord chancellor, that if on the firſt point, the opinion of the judges ſhould be in favour of the defendant in error, and on the others againſt him, another queſtion might not ſtill be conſidered, whether, when the defendant to the action was privy to the fraud, the plaintiff might not recover in an action of deceit?

245. LETTERS OF CREDIT being a ſpecies of Bills of Exchange, and equally binding with them, I ſhall ſpeak of them under this head, as the proper place for it; and preſume it will be needleſs to counſel my readers to be very circumſpect in giving them, as their honour and credit is as much concerned for the punctual re-payment of whatever ſums are advanced in conſequence thereof, as they would be for the diſcharge of a bill of exchange.

246. Theſe letters are of two ſorts, *viz. general* and *ſpecial*, and both given to furniſh travelling perſons with caſh as their occaſions may require; they are commonly open or unſealed, and contain an order from the writer to his correſpondent or correſpondents, to furniſh the bearer with a certain ſum, or an unlimited one; and the difference between them is, that the former is directed to the writer's friends at all the places where the traveller may come (though it is not cuſtomary to give ſeparate letters to each place) and the other directed to ſome particular one; obliging himſelf for the re-payment of whatever monies ſhall be advanced in compliance with the credit given, on producing a receipt or a bill of exchange, which he thinks proper to have from the perſon credited.

247. If any money is advanced on either ſpecies of theſe letters and bills of exchange given for the ſum on the perſon who wrote them, he is obliged to accept and pay the ſame; and in caſe of refuſal he may be compelled thereto, rather than the drawer, as the remitter in the loan of his caſh had more regard to his correſpondent's ſufficiency than the drawer's, whom it is probable he knew nothing of; therefore, in this reſpect, the perſon giving the credit is to be reputed as the drawer.

248. And as the giver of theſe letters is ſo obliged for the punctual re-payment of the money advanced, I repeat that he ought to be very cautious to whom he gives them, more eſpecially thoſe without limitation, as, in the hands of a diſhoneſt perſon they may prove his ruin; and as it is hardly poſſible that he that requeſts the credit ſhould be ignorant of what caſh he ſhall want, at leaſt with a little difference, I think the compliment, for it can be nothing elſe, of an unbounded credit ſhould be excuſed, being really of no ſervice either to him that pays, or him that receives it.

249. Advice by poſt ſhould always follow a letter of credit, and duplicate of it accompany ſuch advice; and it would be prudent therein to deſcribe the bearer, with as many particulars as poſſible, for fear he ſhould loſe, or be robbed of his credentials, and a ſtranger reap the effects of them. Theſe letters are wrote in various forms, and though a copy may be ſuperfluous to moſt of my readers, yet the proſpect of its being ſerviceable to ſome few, I hope, will plead my excuſe for adding it here.

SIR, *London*, the 3d of *January*, 1794.

THIS is deſigned to accompany *(or kiſs your hands by)* Mr. *John Steevens*, and to requeſt your furniſhing him with a thouſand dollars of your money *(or with as much caſh as he ſhall require of you, if you give an unlimited credit)* for which pleaſe to take his bills on me, or on any other he ſhall think proper to draw them; and I do hereby oblige myſelf for the punctual diſcharge, and remain,

Sir, your moſt humble Servant,

W. B.

To Mr. Thomas Richardſon,
Merchant, in Leghorn.

250. The

250. The time of paying bills is always ſettled between the drawer and remitter, ſometimes on a certain fixed and appointed day, or at ſight, or ſo many days after ſight, or ſo many days, weeks, or months after date; at uſance, half uſance, uſance and half, and two or three uſos or uſances.

251. A bill payable at a certain day, is due on the day mentioned, according to the ſtile of the place it is drawn on, not where it is drawn from; ſo that a bill from *Amſterdam*, made payable at *Hamburgh* on the laſt day of *November*, is to be underſtood that day of *Old Stile*, and *vice verſa* for a bill drawn in the ſame manner from *Hamburgh* to *Amſterdam*.

252. If bills are made payable at ſome days after ſight, their acceptance is dated on the day they are preſented, and from thence the days of their running are counted; but, if they are made payable at ſight, they are to be ſatisfied without any days of grace to be allowed.

253. If a bill be made payable ſome weeks after date or ſight, the weeks muſt be reduced into days, and in counting theſe, the almanack ſhould be conſulted; and if a bill is drawn to be paid one or two months after ſight or date, then the day of payment falls on the ſame day in the ſucceeding month, &c. from that in which the bill was preſented or dated, although the months differed in the number of their days. *As for example*, a bill dated the 7th of *January*, and payable a month after date, is payable the 7th of *February*, not the 8th, and a bill dated the 30th of *January*, to be paid a month after date, becomes due on the laſt day of *February*, though this month hath not ſo many days in it as the other.

254. And when a bill is dated according to the *Old Stile*, payable a month after date in a place where the *New Stile* is obſerved, it does not always fall due a month after the *Old Stile* date, as will be proved by ſuppoſing the bill dated the 25th of *April*, O. S. payable a month after date, in a *New Stile* country, and it does not fall due on the 25th of *May*, O. S. which is the 5th of *June*, N. S. but on the 6th, for when the bill was dated it was the 6th of *May*, N. S. which ought to be well obſerved, as this will make a difference of two days in leap-years, and of three in others.

255 A bill made payable a month after date from the 28th of *February*, falls due on the 28th of *March*; but if it be dated *ultimo Feb.* then it is not due till the *ultimo March*, and the ſame in *June* and *July*, as the one hath 30, and the other 31 days.

256. Bills made payable here at ſight have no days of grace allowed; but if it is but one day after ſight; the acceptor may claim them, though this ought not be practiſed in countries where the reſpite days are many.

257. To reckon the preciſe time of a bill's payment, made payable after date, it is neceſſary to calculate the difference between the Old and New Stile, and to know what uſance is in every country; and for my reader's information herein, the following places obſerve the *New Stile*, viz. *London*, *Amſterdam*, *Dordrecht*, *Haerlem*, *Leyden*, *Rotterdam*, and all the *United Provinces* of *Holland*; as alſo *Middleburgh*, *Ulliſſingen* in *Zealand*; *Antwerp*, *Bruges*, *Dornick*, *Ghent*, *Ryſſel*, *Bruſſels*, *Valenciennes*, and all *Brabant*, *Flanders*, and *Artois*; *Paris*, and all *France*; *Spain*, *Portugal*, and all *Italy*; *Augſburgh*, *Crembes*, *Lints*, *Vienna*, and ſeveral places of the empire; *Breſlaw*, and all *Sileſia*; *Colne*, *Dantzick*, *Koningſburgh*, *Thorne*, and all *Poland*.

258 The places that obſerve the *Old Stile* are,

Ruſſia, the Electorate of *Bradenburgh*, *Denmark*, *Eaſt-Friezeland*, *Francfort* on the *Main*, *Geneva*, and the Proteſtant Cantons of *Switzerland*, *Hamburgh*, and all *Holſten*; *Lubeck*, and all *Mechlenburgh*; *Leipzick*, *Madgeburgh*, *Naumbourgh*, and all *Saxony*; *Riga*, *Stockholm*, and all *Sweden*; *Straſburgh*, &c.

The *Popiſh* Electorates and Principalities of *Germany* obſerve the *New Stile*, and the *Proteſtant* ones continue the *Old*; and as the reaſon of this difference may not be ſo generally known, I beg leave to intrude ſo much on the patience of that part of my readers who are acquainted with it, as to inform thoſe that are not, which I will do in a few words.

JULIUS CÆSAR, deſirous of rectifying the erroneous computation of time that had prevailed till then, undertook the reformation; and as the year was corrected by him, the *Vernal Equinox*, which reduces day or night to an equal length all over the globe, except juſt under the Pole, happened in 325 to fall upon the 21ſt of *March*; and from this the *Nicene* Council, being then ſitting, regulated the terms for the obſervance of

Eaſter,

Eaſter. But Pope *Gregory* XIII. obſerving in the year 1582, that the *Equinox* was changed from the 21ſt to the 11th of *March*, ordered ten days to be deducted from the calendar, and the 11th to be counted the 21ſt; which edict was generally obſerved by the nations acknowledging the ſupremacy of the See of Rome, but it did not obtain univerſally, as moſt of the *Proteſtant* countries continued to reckon their time as formerly; and this gave riſe to the different ways of computation that now obtain in *Europe*, diſtinguiſhed by the *Julian* and *Gregorian* calendars; and I have only to add, that ſince the time of Pope *Gregory*, the *Equinox* has changed a day, *viz.* from the 11th to the 10th of *March*, ſo that the difference between *Old* and *New Stile* is eleven days. *Great Britain* and *Ireland* adopted the *New* or *Gregorian Stile* by act of parliament, in the year 1752.

259. USANCE from *London* to any part in *France* is thirty days; this being declared to be a month in regard of exchanges in that kingdom, whether the month has more or fewer in it.

Uſance from *London*, to *Hamburgh*,
Amſterdam,
Rotterdam,
Middleburgh,
Antwerp,
Brabant,
Zealand,
Flanders,—And from theſe places to *London*, is one calendar month after the date of the bill.

Uſance from *London* to *Spain*,
Portugal,——And from theſe places to *London*, is two calendar months after date.

Uſance from *London* to *Genoa*,
Leghorn,
Milan,
Venice,
Rome—And from theſe places to *London*, is three months.

The uſance of *Amſterdam*,

Upon *Italy*, *Spain*, and *Portugal*, two months.

Upon *France*, *Flanders*, *Brabant*, *Geneva*, and upon any place in the Seven *United Provinces*, is one month.

Upon *Frankfort*, *Nuremberg*, *Vienna*, *Augſburgh*, *Cologn*, *Leipzick*, and other places in *Germany*; upon *Hamburgh* and *Breſlau*, is fourteen days after ſight, two uſances twenty-eight, and half uſance ſeven.

Uſance from *Dantzick*, *Koningſberg*, and *Riga*, upon *Amſterdam*, is at one month's ſight, though it is common to draw from the firſt at forty day's date, and from the others at forty-one, but oftener at ten and eleven.

And from *Amſterdam* on the ſaid places, at a month's date, without mentioning uſance; though ſometimes at forty and forty-one days; and ſometimes on *Breſlau* at ſix weeks date.

260. Moſt nations have generally agreed to allow the acceptor of a bill ſome ſmall time for payment, beyond that mentioned in the bill, termed days of grace, or reſpite: but they as generally diſagree in the number, and commencement of them.

At *London*, *Bergamo*, *Vienna*, three days are allowed; at *Francfort*, out of the fair time, four; at *Leipzick*, *Naumburg*, and *Augſbourgh*, five; at *Venice*, *Amſterdam*, *Rotterdam*, *Middleburgh*, *Antwerp*, *Cologn*, *Breſlau*, and *Nuremberg*, ſix; at *Naples*, *Denmark* and *Norway*, eight; at *Dantzick*, *Koningſberg*, and in *France*, ten; at *Hamburgh* and *Stockholm*, twelve; in *Spain*, fourteen; at *Rome*, fifteen; at *Genoa*, thirty. At *Leghorn*, *Milan*, and ſome other places in *Italy*, there is no fixed number of reſpite days. *Sundays* and other feſtivals are included in theſe days at *London*, *Naples*, *Amſterdam*, *Rotterdam*, *Antwerp*, *Middleburgh*, *Dantzick*, *Koningſbergh*, and in *France*; but not at *Venice*, *Cologn*, *Breſlau and Nuremberg*: At *Hamburgh* and in *France*, the day on which the bill falls due makes one of the days of grace, but no where elſe.

261. At *Venice* no bills are permitted to be paid by indorſement, ſo that they muſt be payable to a certain perſon, and not to order, or to the procuration of him intended to receive

receive them; and in places where there are banks, if bills fall due when theſe are ſhut, there are always ſome days of grace allowed the acceptor after their opening.

262. It was formerly agreeable to the laws of *Portugal*, and I believe is ſtill ſo to thoſe of *Italy*, though certainly quite contrary to juſtice and honeſty, for an acceptor to be freed from this obligation in caſe of a drawer's inſolvency before payment; but as ſome remarkable trials on this ſubject in the firſt-mentioned kingdom ſeem to have altered the laws for the better, I ſhall acquaint my reader both with the occaſion and ſucceſs of them.

263. Some few years ago, a gentleman from the city of *London*, drew ſome bills on his correſpondent at *Liſbon*, and died two or three days after inſolvent; the bills were accepted, but on advice of the drawer's death and inſolvency, payment was refuſed; and the acceptor, ſheltering himſelf under the then ſubſiſting law, ſtood a trial on being ſued; but the judge, having a regard to the cuſtom of merchants, gave a ſentence againſt him, and he paid accordingly. However, ſome time after a merchant at *Amſterdam*, drew two bills on another at *Liſbon*, which were indorſed by one here, to two ſeveral ones there, and were both punctually accepted; but the drawer failing, and the indorſer likewiſe, the acceptor refuſed payment, which obliged the poſſeſſors to ſue him for the value, and this they did in ſeparate ſuits, carried on before different judges, whoſe opinions were ſo oppoſite, that one of the holders had a ſentence in his favour, and the other againſt him; upon which new ſuits were commenced, and finally determined for them, who accordingly recovered not only the principal and charges of the bills, but thoſe of the law-ſuits alſo; which ſeems to have fixed the point before conteſtable, and now placed it on a par with what is obſerved in the other parts of *Europe*. And though there are ſome few in *Italy* who value themſelves on the protection of the laws to ſcreen them from a payment under the afore-mentioned circumſtances, yet they thereby irreparably prejudice their character, and muſt not expect any future credit; ſo that thoſe who have any regard for either, act more like merchants and honeſt men, and diſcharge their acceptances whilſt they are able.

264. In the territories of the king of *Denmark*, no bills muſt be made payable after ſight for a longer term than two months; and whatever proteſted bills are not ſued for in ſix months from the proteſt's date, ſhall loſe their right as bills of exchange, and thenceforward be only regarded as a book debt; and all law-ſuits concerning them muſt be concluded within a year. It hath long ſince been determined by a ſettled rule among the merchants at *Copenhagen*, and confirmed by a judgment in the higheſt court, that the charges on all proteſted bills ſhall be ſix *per cent.* for exchange and re-exchange, with $\frac{1}{2}$ *per cent.* for proviſion; and by a placard of the 26th of *Nov.* 1731, bill-bonds, which are a ſort of inland bills, and ordered in lieu of notes of hand, were introduced; they muſt be on ſtamped paper, and drawn at three months, but not to continue longer than four; they have a right when proteſted like foreign bills of exchange, to bear an intereſt of $\frac{1}{2}$ *per cent.* monthly, and muſt be ſued for within a month after due.

265. Since I began on this ſubject of bills, a ſmall diſpute has happened at *Leghorn* about their payment, which I ſhall juſt mention for my reader's information. It has always been cuſtomary at that place to pay them in gold; but zechins have lately been ſo ſcarce there, as to bear a premium of two or three *per cent.* above ſilver; to avoid which expence ſeveral tendered payment of their bills in the laſt-mentioned metal, and not being admitted, ſome of them were returned proteſted, which occaſioning a little confuſion in their commerce, an application was made to the Regency, who, as I underſtand, determined that bills ſhould be paid as uſual; however, ſome here pretend to have an inſertion in all they take for their payment in gold, which innovation I preſume will wear off, as the cauſe that occaſioned it ceaſes. And having treated of every particular relative to bills, but their form, that now naturally challenges a remark.

266. Bills of exchange ſhould be written in a fair hand, cleanly, and without miſtakes: their ſtile admits of ſeveral variations; as one or more bills are granted of the ſame tenour; difference in the time and place of payment; or according to the ſpecies it is to be made in; which the following forms may ſerve to illuſtrate.

London, the 18th of *January*, 1794. Exchange for 50*l.* ſtr.

AT ſight of this my only bill of exchange, pay to Mr. *John Rogers*, or order, fifty pounds ſterling, value received of him, and place the ſame to account, as *per* advice (or *without further advice)* from

Samuel Skinner.

To Mr. *James Jenkins*,
Merchant, at *Briſtol.*

London, the 18th of *January*, 1794. Exchange for 10,000 Liv. *Ts.*

AT fifteen days after date (or *at one, two*, &c. *uſos)* pay this my firſt *per* exchange, to Meſſ. *John Rogers* and comp. or order, ten thouſand livres *tournois*, in ſpecie known to us this day, value of dittos, and place the ſame to account, as *per* advice from

Thomas Bancroft.

To Mr. *Henry Kendrick*,
Banquier, in *Paris.*

The ſecond.

London, the 18th of *January*, 1794. Exchange for 10,000 Liv. *Ts.*

AT fifteen days after date (or *at one, two*, &c. *uſos)* pay this my ſecond *per* exchange (firſt or third not paid) to Meſſ. *John Rogers* and comp. or order, ten thouſand livres *tournois*, in ſpecie known to us this day, value of dittos, and place the ſame to account, as *per* advice from

Thomas Bancroft.

To Mr. *Henry Kenarick*,
Banquier, in *Paris.*

2)

and in the third write *(firſt or ſecond not paid)* which example may ſerve for all bills.

London, the 18th of *January*, 1794. Exchange for D. 1000.

AT uſance pay this my firſt *per* exchange to Mr. *Ignatio Teſtori* (or *to the procuration of Mr.* Ignatio Teſtori) one thouſand ducats banco, value of Mr. *Gregory Laman*, and place it to account, as *per* advice from

Nicholas Reubens.

To Mr. *James Robottom*,
Merchant, in *Venice.*

London, the 18th of *January*, 1794. Exchange for 1600 *per* 000 Rs.

AT thirty days ſight (or *uſance*, &c.) pay this my firſt *per* exchange to *Samuel Fairfax*, Eſq. or order, one thouſand ſix hundred mil. reis, value of ditto, and place it to account, as *per* advice from

Jeremiah Tomlinſon.

To Meſſ. *Brown* and *Black*,
Merchants, in *Liſbon.*

London,

London, the 18th of *January*, 1794.

Exchange for 273*l.* 15*s.* ſt. at 35 ſc. 7 g. *per* £. ſt.

AT two uſos and a half, pay this my firſt *per* exchange, to Mr. *Joſeph Jacobs*, or order, two hundred and ſeventy-three pounds fifteen ſhillings ſt. at thirty-five ſhillings and ſeven groots *per* pound ſterling, value of Mr. *James Merryman*, and place it to account, as *per* advice from

John Johnſon.

To Mr. *David Hill*,
Merchant, in *Amſterdam*.

London, the 18th of *January*, 1794. Exchange for 2000 Dollars.

AT uſance pay this my firſt *per* exchange, to Mr. *Richard Redman*, or order, two thouſand dollars, value of him, and place them to account of *W. M.* Eſq. and co. as *per* advice from

Abraham Moreton.

To Mr. *Bartholomew Jermain*,
Merchant, in *Leghorn*.

N. B. *Bills are drawn in the ſame manner on* Genoa.

London, the 18th of *January*, 1794.

Exchange for xx 2000. at 400 rei, *per* cruſado.

AT uſance pay this my firſt *per* exchange, to Mr. *Samuel Levi*, jun. or order, two thouſand cruſadoes, at four hundred reis *per* cruſado, value of ditto, and place them to account, as *per* advice from

John Thomas.

To Mr. *Richard James*,
Merchant, in *Oporto*.

London, the 18th of *January*, 1794. Exchange for £. 108 : 10 *Iriſh* ſtr.

AT thirty-one days after date, pay, in *Dublin*, this my firſt *per* exchange, to Meſſ. *Richard* and *Thomas Moore*, or order, one hundred and eight pounds ten ſhillings, ſterling money of *Ireland*, value of Mr. *Ezekiel Sampſon*, and place it to account, as *per* advice from

Nicholas Fairman.

To Mr. *Chriſtopher Reynolds*,
Merchant, in *Waterford*.

A Bill drawn in *French*.

Marſeille, 31 *Octobre*, 1793. *B. M.* 350.

A Nonante jours de datte, payez par cette premiere de change, à l'ordre de Meſſ. *Jean Jacobſon* & Fils, trois mil. trois cent cinquante marcs banco, valeur en compte.

Jean Martel.

A Monſieur
Monſ. *Jacob Geraers*,
A *Hamburgh*.

The Indorſements are as follow:

Pay to Mr. *James Trotter*, or order, value in account. *Stockholm*, the 3d of *November*, 1793.

John Jacobſon and Sons.

Pay to Mr. *Levi Solomon*, or order, value received. *London*, the 2d of *December*, 1793.

James Trotter.

The following is a ſecond Bill in *Italian*.

Londra, 24 *Feb.* 1794. *per* 600 d'8 *r.*

A D uſo pagate *per* queſta ſeconda di cambio, una ſol volta, al mio ordine, pezze ſei cento di otto reale, valuta contoci, or *avuta del medeſſimo*, ponendole come *per* la d'aviſo addio

Thomas Deacon.

Al Sar. *Pietro Cambanelli*, à *Livorna*.
La prima *per* accettaz. in Mano di *Sr. Fralli*, &c.

London, the 18th of *May*, 1794. Exchange for 3000 D.

A T uſance pay this my firſt *per* exchange to yourſelves, or *to your own order*, three thouſand dollars of eight rials each, gold or ſilver of the currency known to us this day, value of Mr. *John Crew*, which place to account, as *per* advice from

Richard Bingham.

To Meſſ. *Patrick Janſen* and Co.
in *Madrid*.

Patrick Janſen and Co.

When bills are drawn at uſance, or ſo many days date, the acceptance muſt be at the bottom of the bill, as in that immediately preceding; but when they are drawn payable at ſo many days ſight, the acceptance muſt expreſs the day it is made; and an indorſer may divide a bill, and make part of it payable to one, and part to another, which is done in the following manner: *A.* poſſeſſing a bill for 200*l.* ſterling, indorſes on the firſt 122*l.* payable to *B.* and on the ſecond 78*l.* payable to *C.* and ſends the firſt to *B.* and the ſecond to *C.* ſo indorſed, and on their preſenting them to the party the bill is drawn on, he accepts the firſt for the 122*l.* and the ſecond for the 78*l.* in conformity to their indorſements.

In *France*, by an ordinance of the king, in *March*, 1673, it is directed, that the nature of the value received for bills of exchange ſhall be inſerted in them, and expreſsly mentioned, whether it was in money, merchandize, or other effects, to prevent ſeveral abuſes that had crept into this branch of commerce, by the bare inſertion only of value received; for it was common to give a note, in payment of a bill of exchange, both expreſſing value received. And this method was found to be of great prejudice to trade, by occaſioning many failures, which the afore-mentioned arret was intended to prevent. And in conſequence thereof, there are four ſorts of bills of exchange in that country, *viz.* the firſt expreſſing ſimply, *value received*; the ſecond, *value received in merchandize*; the third, *value in himſelf*; and the fourth, *value underſtood*. The firſt and ſecond need no paraphraſe, being both alike in their negociation, and their diſtinction only anſwering ſome ends that may occur between the drawer and deliverer, in caſe of any failure or fraud. The third ſort is, when a merchant draws a bill of exchange on one who owes him money, which he ſends to his friend or factor, to procure acceptance and payment; and as the acceptor is a creditor of his, an inconvenience might accrue to him, ſhould he inſert value received, as his friend or factor might pretend that it belonged to him, appearing by the bill that the drawer had received the value. The fourth is, when a perſon taking a bill of exchange from one on whoſe credit he cannot rely, gives the drawer his acknowledgment of receiving the bill, whoſe value he obliges himſelf to ſatisfy, on having advice that the bill is paid; but if the bill returns proteſted, it is again exchanged for the note, the drawer defraying the charges. The times for which bills are made payable are alſo four, *viz.* at ſo many days ſight, eight, ten, fifteen, &c. and the time does not commence running till the day after it is preſented and

and accepted; ſo that a bill drawn payable at ten days ſight, and accepted the laſt day of *April*, is not demandable till the 11th of *May*, and the reaſon is, that the day of acceptance which is the 30th of *April*, is not counted, but the reckoning begins only on the 1ſt of *May*; the 10th of *May*, on which the bill expires, is not counted neither, becauſe that the 10th does not finiſh till midnight, and conſequently an action cannot be brought againſt the acceptor till the 11th of *May*, which begins the moment ſucceeding that on which the 10th finiſhes; and in effect, if one begins to count from the 1ſt of *May*, and continues to the 10th at midnight incluſive, there will be found no more than ten whole days, which is the time the acceptor had to pay the bill in.

The ſecond method of drawing bills, is to make them payable at a day certain. For example—a drawer gives his bill to be paid on the 1ſt of *May*, which, according to what is ſaid in the preceding caſe, is not demandable till the ſecond, as the day of its falling due is never counted.

And there is no obligation to procure acceptance to a bill of this tenour, as the time goes on whether accepted or not; but it is otherwiſe with the foregoing, payable at ſo many days ſight; though it is certainly more adviſeable to get it accepted, as by this means another debtor is added to the drawer, which becomes a new ſecurity.

The third time of bills is at uſance, which is according to the places drawn on, double uſance, or two uſances, &c. and though there is no more obligation to procure acceptance to this than to the preceding one, as the time runs on from the day of its date, yet the ſame reaſon ſubſiſt for ſoliciting its acceptance as occurred then.

And there having been formerly many diſputes about the time of bills falling due that were drawn payable at uſance, double uſance, &c. the king by this ordinance has regulated it for the future, by making uſance to be thirty days, whether the months have more or leſs in them, the thirty days to be counted from the day the bill is dated, and not to be demanded till that ſucceeding the expiration of the thirtieth, as has been obſerved in thoſe bills payable at ſo many days ſight, and at a day certain; but theſe laws are only binding in *France*, on ſuch bills as are payable there, but not on thoſe drawn from thence on other countries, where different uſages and cuſtoms are practiſed.

The fourth ſort of terms of bills, is, when merchants draw them payable at *Lyons* in the fair-time, which they term payment, and which they have four times a year, as has been before mentioned,

When honeſty reigned among the merchants, theſe bills payable in payment at *Lyons*, were never accepted by writing, he on whom they were drawn only ſaid verbally, SEEN, and the bearer noted it in his book accordingly. The *Lyonnois* practiſed this for a long time without any accident; but integrity became ſlack by the corruption of the times, and ſome bankers having denied that bills had been preſented them, the merchants for a greater ſecurity now have them accepted in writing.

It was neceſſary that the bankers and merchants of *Lyons*, to eſtabliſh this diſpoſition in the acceptations, and to reſtrain many other abuſes committed in their city, ſhould ſeek a remedy, and therefore they propoſed a regulation to the governor, &c. thereof, the which was approved of, and allowed by an arret of council, and regiſtered in the parliament of *Paris* in the following words, *viz.* "That the acceptations of the ſaid bills of exchange ſhall be made by writing, dated and ſigned by thoſe on whom they "are drawn, or by perſons duly empowered by a procuration, of which the minutes "ſhall remain with the notary; and all thoſe which ſhall be made by factors, deputies, "and others, not furniſhed with procurations, ſhall be null and of no effect againſt him "on whom they are drawn, ſave the recourſe againſt the acceptor."

This regulation, which was only for the city of *Lyons*, proved a ſufficient remedy for the abuſe that was committed by the want of acceptance to bills; but this did not in any ſhape remedy thoſe ariſing from a conditional acceptance in theſe words, *accepté pour repondre au temps*, accepted to anſwer in time, for this is the ſame as ſaying nothing, and is contrary to the public ſurety; becauſe a merchant of *Paris* or other places, drawing a bill of exchange on his correſpondent at *Lyons*, who ſhall have no effects of his in hand, and who only accepting it with the circumſtance, *to anſwer in time*, not being willing to advance for his friend, when the ſeaſon of the fair, or payment is come, if remiſſes are made on him, he pays a creditor with a debt, if he has the opportunity, or elſe the contents of the bill are diſcharged at the end of the payment; but, if he has

no

no proviſion made him, he lets the bill be proteſted; ſo that a merchant who does not underſtand this cuſtom, and who has paid his money three months before, comes upon the drawers or bearers of orders, who very often have failed in the mean time; whereas if he on whom the bill is drawn, accepts purely and ſimply when it is preſented him, he in whoſe favour it was, would have had immediate ſecurity, and its payment when fallen due.

And however ſuitable to the intereſt of the *Lyonnois* this practice might be, as they generally accepted without effects in hand, yet as it placed them on a different footing from every other trader in the kingdom, it was judged but reaſonable by other merchants to find out a method that ſhould put them all on a level, and oblige thoſe of *Lyons* to a pure and ſimple acceptation; but though this was obſerved by ſome conſiderable bankers, who drew their bills, or took them with the inſertion of ſuch words as would not admit of evaſion in the acceptor, yet this did not anſwer the intent, as many of *Lyons* would not accept the draughts on them in any other manner than that formerly mentioned; therefore to remedy the inconvenience and diſorders which this occaſioned in trade, and to place all his majeſty's ſubjects on a level, he directed by his ordinance, "that all bills of exchange ſhall be accepted by writing purely and ſimply; abrogating "the cuſtom of a verbal acceptance, or by theſe words, *Veu ſans accepter*, ſeen without "accepting, or *accepted to anſwer in time*, and all other conditional acceptations, which "ſhall be deemed a refuſal, and the bills may be proteſted."

I mention thoſe circumſtances, in which I think moſt *European* nations are intereſted, as there is hardly one from whence a conſiderable trade is not carried on with *Lyons*, either in the commercial or banking way.

And though the happy improvement of our own ſilk manufactures has very conſiderably leſſened for ſome years paſt, our trading engagements with that powerful city, yet there ſtill remains ſuch an intercourſe, that the knowledge of tranſacting buſineſs there may occaſionally concern many of my readers.

An Abridgment of the Statutes now in Force relative to Promiſſory Notes and Bills of Exchange, not publiſhed in any Treatiſe on that Subject.

By the 15 *Geo.* 3. chap. 51. All promiſſory notes under 40 *s.* are void—See the ſame 17 *Geo.* 3. chap. 30. and by the 27 *Geo.* 3. chap. 16. the ſaid acts are made perpetual.

All promiſſory or other notes, bills of exchange, draughts, undertakings in writing, being negotiable and tranſferable, for the payment of any ſum or ſums of money leſs than 20*s.* in the whole, ſhall be void: And if any perſon or perſons ſhall publiſh or utter any ſuch notes, bills, draughts, or engagements, for a leſs ſum than 20*s.* or on which leſs than 20*s.* ſhall be due, and which ſhall be in any wiſe negotiable, or ſhall negotiate the ſame; every ſuch perſon ſhall forfeit not exceeding 20*l.* or leſs than 5*l.*

By the 17 *Geo.* 3. c. 30. that ſaid act had been found beneficial, and in caſe the proviſion therein contained were extended to a further ſum, the good purpoſes of ſaid act would be further advanced; it is therefore enacted, that all promiſſory or other notes, bills of exchange, draughts, or undertakings in writing, being negotiable or tranſferable, for the payment of 20*s.* or above that ſum, and leſs than 5*l.* or on which 20*s.* or above and leſs than 5*l.* ſhall remain undiſcharged, ſhall ſpecify the names and places of abode of the perſons reſpectively to whom or to whoſe order the ſame ſhall be made payable: and ſhall bear date before or at the time of drawing or iſſuing thereof, but not on any day ſubſequent thereto, and ſhall be made payable within 21 days next after the day of the date thereof, and ſhall not be tranſferable or negotiable after the term thereby limited for payment; and every indorſement thereon ſhall be made before the expiration of that time, and ſhall bear date at or not before the time of making thereof, and ſhall ſpecify the name and place of abode of the perſon to whom or to whoſe order the money is to be paid: otherwiſe ſuch note, bill, draught, or undertaking ſhall be void.

Which

Which notes, bills, draughts, or undertakings and indorſements, may be in the form or to the effect following:

Twenty-one days after date I promiſe to pay to *A. B.* of or his order, the ſum of for value received by me at on the day of in the year

J. R.

Witneſs
G. K.

Indorſement *Toties Quoties.*

Pay the contents to *G. H.* of or his order.

A. B.

Witneſs
A. K.

If upon advice ſay——Twenty-one days after date, pay to *A. B.* of or his order, the ſum of value received as adviſed by

C. D.

The publiſhing, uttering, or negociating notes, bills of exchange, draughts, or undertakings, contrary to this act, is prohibited and reſtrained under the like penalties as for offences againſt the former acts.

By the 22 *Geo.* 3. chap. 33. certain ſtamp duties were granted upon bills of exchange or promiſſory notes; which being found inconvenient, the ſame was repealed by the 23 *Geo.* 3. c. 49. and other duties were granted in lieu thereof, as follows: For every piece of vellum or parchment, or ſheet or piece of paper, on which any foreign or inland bill of exchange, promiſſory note, or other note, draught, or order, ſhall be ingroſſed where the ſum expreſſed therein, or made payable thereby, ſhall not amount to £.50, 6*d.* of £.50 or upwards, 1*s.* The ſame to be paid by the perſon giving ſuch bill of exchange, promiſſory or other note. But by 24 *Geo.* 3. c. 7. ſect. 1. ſect. 4. notes or draughts under 40*s.* are not liable to any ſtamp duty.

Provided that no foreign bill of exchange, promiſſory or other note, draught, or order, ſhall be chargeable with more than 6*d.* each copy; but every duplicate, and triplicate thereof ſhall be charged with the like duty of 6*d.*

And provided that nothing herein ſhall extend to charge any draught or order for the payment of money upon demand, on any banker reſiding within 10 miles of the place of abode of the drawer. But by 24 *Geo.* 3. chap. 7. ſect. 1. line 3. ſuch exemption ſhall be confined to draughts or orders made payable to the bearer, and to no other notes, draughts, or orders.

And provided—See Appendix to *Burn's* Juſtice. Tit. Bill. of Exchange, p. 33. London, 1792.

I have now done with bills of exchange, and exerted my endeavours to reduce every neceſſary obſervation on them into as ſmall a compaſs as the nature of the ſubject would permit, conſiſtent with rendering myſelf intelligible, and the rules, I have laid down, clear and practicable; and though I might, without incurring any imputation of prolixity, have ſwelled a diſcuſſion of this important article into a volume inſtead of a chapter, I hope I have left nothing unſaid that could contribute to my purpoſe of clearing up every difficulty which might ariſe to my readers in their exchanging buſineſs; having carefully collected and communicated the ſentiments of the beſt writers in all languages on this topic, ſo far as they were agreeable to that experience which a long practice in this branch of buſineſs has furniſhed me with; and I flatter myſelf that I ſhall not be accuſed of vanity if I aſſert, that my labours herein, and endeavours to have every ſection ſuch as to ſtand the ſtricteſt ſcrutiny, have by far exceeded thoſe of other writers that have gone before me, who either have ſuperficially run over the matter, or blindly propagated the errors of one another, through ignorance or ſloth, which I have ſtudied to rectify, and I flatter myſelf with ſucceſs.

Before

Before I treat of arbitrations, I ſhall ſay ſomething of *brokers*, as a proper appendage to the preceding diſcourſe, though they are not ſo much concerned in the exchanges of money and bills as they were formerly; the revolutions that happen in commerce as well as politicks, having thrown the greateſt part of that buſineſs into the hands of the bankers in *London*, and in moſt of the capital cities in *Europe*.

Of Brokers.

BROKERS are perſons ſworn and authoriſed by the magiſtracy of the place where they act, and ſuch are always regarded in preference to others, who interfere in theſe negociations without being licenſed; as credit is given to the perſonal evidence, and to the books of ſworn brokers in all courts of juſtice, and out of court, in all caſes of arbitration or compromiſe, though it is not admitted from the others; and in moſt places, thoſe who illegally exerciſe the function, are fined for acting without permiſſion.

The number of ſworn brokers in *London* is unlimited; at *Amſterdam* there are three hundred and ſeventy-five *Chriſtians*, and twenty-two *Jews*, acting in trade and exchanges; beſides which, there are many who practiſe, as they do here, unſworn and unlicenſed. The number of theſe at *Amſterdam*, is more than double that of the *ſworn* brokers, and they go by the name of *ambulatory* brokers, and it is to be obſerved, that a merchant runs great riſks in employing them, for in caſe of litigation, the bargains and contracts they have made are liable to be rendered null and void.

It is the duty of brokers to be *diligent*, *faithful*, and *ſecret*, whether their dealings be in exchange, or purchaſes and ſales, as they are mediators in all negociations; and thoſe licenſed may properly be called publick ones, from the nature of their buſineſs, which leads them to a general employ between merchants, traders, and remitters. They are called at *Amſterdam*, as well as here, *brokers*, courtiers, or mackelaers, though on the coaſts of *Provence*, and up the *Levant*, they are termed *cenſals*: and at *Paris*, the exchange brokers have, for about a century paſt, bartered this appellation for that of agents; and to render the office yet more honourable, about fifty years ago the quality of king's counſellor was added to it, though the buſineſs is the ſame, however the denomination may differ.

Thoſe who exerciſe the function of brokers ought to be men of honour, and capable of their buſineſs; and the more ſo, as both the credit and fortune of thoſe that employ them may in ſome meaſure be ſaid to be in their hands, and therefore they ſhould avoid babbling, and be prudent in their office; which conſiſts in one ſole point, that is, to hear all, and ſay nothing; ſo that they ought never to ſpeak of the negociations tranſacted by means of their invention, or relate any ill report, which they may have heard againſt a drawer, nor offer his bill to thoſe who have ſpread it.

Before offering any bills of exchange, which a broker is commiſſioned about, he ought to aſk the perſon he applies to, whether he wants bills for ſuch a place, or hath money to diſpoſe of? and if the merchant queries whoſe the bills are which he has to negociate, he ought not to inform him, till his reply lets him know whether he wants any or not.

When a merchant has diſcovered his intentions to draw, or that he has bills to negociate, the broker ſhould offer them, purely and ſimply, without any exaggeration in their favour or diſfavour; and if he to whom they are propoſed refuſes them, with ſaying they do not ſuit him, it would be not only improper, but impertinent in the broker to aſk the reaſon of ſuch a refuſal, and the height of imprudence in him to ampli[fy] the

their goodneſs, or the ſolvency of their owner, in order to induce the refuſer to change his intentions, and take them; on the contrary, he ought to take care never to deceive the contracting parties, but to be ſincere in all his actions, without uſing any artifice to attain his purpoſed end in his negociations; and above all, he ſhould avoid offering things for which he has no authority, as he may be taken at his word, and have the negociation remain for his own account, to his no ſmall diſadvantage, if known, both of purſe and credit; and the ſame may happen in purchaſes and ſales, as in exchanges

A broker ſhould take care in making an agreement between two perſons, to be well aſſured of the place to be drawn on, and when it is; where there is a ſettled uſance, he has nothing to treat of but the price; though, in caſe the parties agree on an exchange for a place where the time of the bill's running is uncertain, that of payment muſt be fixed, with every other requiſite to conclude the bargain.

When a broker has adjuſted a remittance, he muſt enquire of the remitter to whom he will have the bills payable, and ſhould always carry ſome ſlips of paper on a poſt day in his pocket, on which to note it, as alſo the ſum agreed for, the time of payment, to whom payable, from whom the value is to be received, at what price the exchange was concluded, and the day it was agreed on, which memorandum he muſt give the drawer, and enter a duplicate thereof in his book, that may ſerve as a teſtimonial, in caſe of any diſpute between the contracting parties.

It is the brokers obligation to call for the bills, and carry them in time to the remitter, though this is a good deal out of uſe in this great metropolis, where the merchant commonly ſends a clerk with them, to leſſen the broker's trouble.

A prudent merchant will never attach himſelf entirely to one broker for fixing the price of the exchange, nor will prefer one to another in the execution of his commiſſion either through favour or friendſhip, but he who offers the moſt beneficial terms ſhould be the agent on that occaſion; and by ſuch behaviour he diſobliges nobody, but rather ſtimulates an emulation in them to procure his advantage.

It is a great fault in a merchant whoſe credit is not well eſtabliſhed, when he has a mind to draw, to make uſe of a broker who is but young in, or ignorant of his buſineſs; and he who draws in virtue of a letter of attorney for another's account is obliged to declare it to the broker, who muſt in conſequence contract in the name of the conſtituent, and not in his who gave the order.

An exchange once concluded with the broker, or by his mediation, ought to be carried into execution; as it is both unfair and illegal for either the drawer or remitter to retract their words given. And if a broker concludes any thing either without or exceeding orders, more eſpecially at an inferior price, the merchant has juſt reaſon to reſent it, though the broker offers ſatisfaction, as his credit is concerned, and may be hurt beyond a poſſibility of reparation.

The bills of young beginners may be offered by a broker, but if he frequently tenders ſuch as are notoriouſly in diſrepute, he muſt greatly ſuffer in his reputation; more eſpecially if he takes on him to recommend them; and if he ſubmits to be employed by one he knows to be inſolvent, or near being ſo, and endeavours to draw or remit for him, when certain that his bills will not be anſwered, or he as a remitter not comply with his engagements, he ought to be ſeverely puniſhed for his knavery; and his being deprived of any future buſineſs is the leaſt he can expect, though the puniſhment is not adequate to his deſerts.

A broker ſhould never aſk more, nor admit leſs, than what the law and cuſtom allows him; this for exchanges in *London* is always one *per mil.* for each of the parties concerned, though on purchaſes of ſales *per cent* and at *Amſterdam* the tariff is ſettled at three ſtivers for a hundred guilders, the half payable by the drawer, and the other moiety by the remitter, as follows, *viz.*

	l.	*s.*	*d.*
A thouſand ducats on *Venice*	4	0	0
A thouſand dollars on *Genoa* or *Leghorn*	4	0	0
A thouſand ducats on *Madrid*, or any other part of *Spain*	4	0	0
A thouſand cruſados on *Liſbon*, or any other part of *Portugal*	4	0	0
A hundred pounds ſterling on *London*, or any other part of *England*, *Scotland*, or *Ireland*	1	10	0
A thouſand crowns on *Paris*, or any other part of *France*	1	10	0

	l.	s.	d.
Though when the exchange was very high, brokerage was in proportion, and formerly guild 4. 10 ſt. were paid on negociating the thouſand crowns.			
A thouſand rixdales on *Francfort*, *Leipzick*, or *Breſlaw*	3	10	0
A hundred livres de gros, or ſix hundred guilders, on *Dantzick*, *Konings-berg*, *Anvers*, *Liſle*, and all *Flanders* and *Brabant*	0	18	0
A thouſand daelders on *Hamburgh*, computed 166$\frac{2}{3}$ guilders	2	10	0
A thouſand guilders on *Rotterdam*, and other parts of *Holland*	1	10	0
A thouſand guilders bank money changed into current	1	0	0
A thouſand guilders of gold changed into ſilver, and *per contra*	1	0	0
Five hundred livres de gros for an *Eaſt-India* action	6	0	0

And in proportion on other places of exchange; not but that ſome brokers impoſe on people they find ignorant of the above-mentioned regulations and cuſtoms, but this is a fraud, which no honeſt man will be guilty of.

At *Paris* brokerage is $\frac{1}{4}$ *per cent.* and at *Lyons* forty ſols is commonly given for three thouſand livres *Tournois*, half by the taker and half by the giver of the bill; and at this laſt place, any one is permitted to exerciſe the function of a broker, it being a free city.

At *Venice* brokerage is $\frac{3}{4}$ *per mil.* at *Genoa* $\frac{1}{3}$ *per cent.* at *Leghorn* $\frac{1}{2}$ *per mil.* at *Bologne* 1 ſol *per* hundred crowns; and in all other banking cities according to what government has ſettled.

What we have already advanced, is ſufficient with reſpect to the tranſactions of exchange brokers in general, and to give an idea of the nature of their buſineſs in foreign countries, which is all that is neceſſary; for every merchant travelling to or reſiding in any great mercantile city in *Europe* muſt make himſelf maſter of the local laws and regulations of the place with reſpect to brokers, and act accordingly: for theſe are liable to vary with the policy and circumſtances of every country, and therefore all printed treatiſes upon ſuch ſubjects may become obſolete and uſeleſs. But the ſame reaſons ſhould oblige the BRITISH MERCHANT to ſtudy all the laws and regulations reſpecting brokers in his own country, on which account we ſhall enter into a detail on that head, and give ample information to the very time of our publication: What alterations happen afterwards, it will be eaſy for him to add, and thereby to make this treatiſe, the ſtandard for his tranſactions with brokers.

Of Exchange and Stock Brokers in England.

VARIOUS claſſes of brokers are comprehended under the general title of EXCHANGE BROKERS, *viz. Inſurance* brokers, *ſhip* brokers, *Eaſt-India* brokers, *ſtock* brokers, *auctioneers*, &c. all of whom, if they tranſact buſineſs within the juriſdiction of the city of *London*, muſt be duly ſworn and admitted to act as brokers by the lord-mayor and court of aldermen, otherwiſe they are liable to a fine and ſuſpenſion, upon information given to the ſaid court, that they tranſact buſineſs without being ſo duly admitted.

Having already treated of exchange brokers, in the limited ſenſe of that title, we ſhall proceed to INSURANCE BROKERS, whoſe peculiar buſineſs it is to bring together the parties wanting to inſure ſhips and merchandiſe from the perils of the ſea, and the inſurers or underwriters: to ſettle the premium, to pay or receive the ſame for the parties concerned, to fill up the policies, atteſt them, &c. They are likewiſe often called upon to draw up charter-parties, particularly when they are to contain any ſpecial conditions, as thoſe conditions often relate to, and are connected with the inſurance.

SHIP BROKERS are employed in buying and ſelling ſhips and cargoes, either by private contract, or by public ſale, the latter is ſaid to be by CANDLE, on account of the cuſtom of lighting an inch of candle at theſe public ſales, and ſuffering the bidders to bid no longer than till the candle is burnt out, in other reſpects they do not differ from common auctions. In time of war, the buſineſs of ſhip brokers is conſiderably increaſed by the ſale of prizes taken from the enemy.

EAST

EAST INDIA BROKERS tranſact the buſineſs by commiſſion of purchaſing the commodities ſold at the company's public ſales, and they are employed by the wholeſale dealers in linen, ſilk, teas, ſpices, drugs, china, &c.

STOCK BROKERS are perſons who confine their tranſactions to the buying and ſelling of property in the public funds, and other public ſecurities for money; and they are employed by the proprietors or holders of the ſaid ſecurities. Of late years, owing to the prodigious increaſe of the funded debt of the nation, commonly called the STOCKS, they are become a very numerous and conſiderable body, and have built, by ſubſcription, a room near the bank, wherein they meet to tranſact buſineſs with their principals and with each other, and to prepare and ſettle their proceedings before they go to the tranſfer-offices at the bank, the South-Sea and India-Houſes, thereby preventing a great deal of confuſion at the public offices, where the concourſe of people is ſo great during the hours of tranſferring ſtock, that if the buſineſs was not prepared before-hand, it would be impoſſible to tranſact it within the given time.

But if the buſineſs of ſtock brokers, was confined ſolely to buying and ſelling the real property of their employers in the funds, there would not be half the number that now follow this profeſſion. It is therefore neceſſary to take notice that the intereſt which foreigners have in our funds, particularly the DUTCH, gave riſe to time bargains, that is to ſay, to contracts for purchaſing and ſelling any quantity of ſtock to be delivered or adjuſted at a future time. The uſual times for which bargains, founded on real property, and intended to be ſettled *bonâ fide*, were made, were from three months to three months, four times within the year, *viz.* in *February*, *May*, *Auguſt*, and *November*; and theſe periods of ſettling the accounts of ſuch time bargains were called the RESCOUNTERS, from a *Dutch* mercantile term for adjuſting accounts current between merchant and merchant. The impoſſibility of aſcertaining whether the commiſſions from abroad given by letters from foreigners, or by their correſpondents here, to brokers to buy and ſell ſtocks for time, were founded upon real property or not, gave birth to *ſtock jobbing*, or dealing in the funds upon ſpeculation, and the perſons that play at this game, for gaming it is of the firſt magnitude, whether principals or brokers, are called ſtock-jobbers.

They purchaſe or ſell for a given time, frequently without being poſſeſſed of any property in the funds they bargain for, merely upon ſpeculation. For inſtance: A. imagines that a peace, or ſome other advantageous national event will raiſe the price of any given fund within the ſpace of three months conſiderably above the price of the day on which he makes his time bargain: On this principle he gives his broker orders to buy a large quantity to be taken and paid for three months from that date; when the time expires, if the ſtock has riſen according to his expectation, inſtead of taking it, for probably it has been bought of a perſon who had it not to deliver, he receives from the broker the difference in money, between the price on the day the bargain was made, and the price at the expiration of the three months, and this is his profit: If, on the contrary, the ſtock has fallen below the price of the day on which he purchaſed for three months, he muſt pay the difference, and this will be a loſing account. It is computed that the bargains on ſtock-jobbing accounts made in the courſe of a year, exceed by many millions, the tranſfers made at the books of real property, and the concluſion is apparent, that great fortunes are made and loſt by ſtock-jobbing. It is to be obſerved likewiſe, that the brokers job for their own account, which occaſions frequently failures at the ſtock-exchange.

The whole buſineſs of ſtock-jobbing being contrary to law, and many perſons acting as brokers therein, who have never been admitted as exchange brokers by the lord-mayor and court of aldermen, it is our duty, in the next place, to give the form of admiſſion of regular brokers, the regulations to which they are ſubject, and abſtracts of the laws in force concerning them, and ſtock-jobbing; after which, if any further information is wanting, we muſt beg leave to refer the reader to a well-known treatiſe on the funds, entitled *Every Man his own Broker**, as it would far exceed our limits, and go beyond the plan of this work, to diſcuſs the whole art and myſtery of ſtock-jobbing.

* Every Man his own Broker; or, A Guide to Exchange-Alley, explaining the nature of the funds, the art and myſtery of ſtock-jobbing, &c. by *T. Mortimer*, eſq. The ſeventh edition, ſold by *John Rice*, *College-Green*.

All

All perſons who ſhall act as brokers within *London*, ſhall be admitted by the court of mayor and aldermen, under ſuch directions for their good behaviour as the court ſhall think fit; and ſhall, upon their admiſſion, pay to the chamberlain *forty ſhillings*; and ſhall alſo yearly pay *forty ſhillings* upon the 29th of *September*, for the uſe of the mayor and commonality and citizens of the city of *London*. 6 *Ann.* C. 16. S. 4.

The principal regulations eſtabliſhed by the ſaid court, in virtue of the powers veſted in them by the ſaid ſtatute are,

That every broker upon his admiſſion is ſolemnly ſworn, truly and faithfully to execute and perform the office and employment of a broker between party and party, in all things appertaining to the duty of the ſaid office and employment, without fraud or colluſion; to the beſt of his ſkill and knowledge.

That he do enter into a perſonal bond, under the penalty of five hundred pounds, the condition of which bond recites the duties ſworn to in the oath of admiſſion, which, if well and truly performed, then the obligation is void, otherwiſe it remains in full force.

A ſilver medal is likewiſe delivered to him, having the king's arms on one ſide, and the arms of the city of *London* on the reverſe, with the broker's name, and he is ordered to produce the ſame upon every occaſion, when he is required to ſhew his qualification.

If any perſon ſhall take upon him to act as a broker, or employ any under him to act as ſuch within the ſaid city, not being admitted, every ſuch perſon ſhall forfeit to the mayor and commonalty, &c. for every offence twenty-five pounds, to be recovered by action of debt in the name of the chamberlain, in any of her majeſty's courts of record. Sect. 5.

Every perſon employed as a broker, ſolicitor, or otherwiſe, in behalf of any other perſon, to make any bargain, or contract for the buying or ſelling of any tallies, orders, &c. or intereſt in any joint ſtock erected by act of parliament, or letters patent, or bonds of any company thereby erected, who ſhall take any money or reward exceeding *two ſhillings and ſixpence* for every hundred pounds, and ſo in proportion, for his ſervice in ſoliciting or procuring ſuch contract or bargain, ſhall forfeit *twenty pounds* with coſts, to ſuch perſon as will ſue for the ſame in any of her majeſty's courts of record at *Weſtminſter*. Sect. 10.

All contracts upon which any premium ſhall be given for liberty to put upon, deliver, accept, or refuſe, any public ſtock or ſecurities, and all wagers, puts, and refuſals, relating to the preſent or future ſtock or ſecurities, ſhall be void: and all premiums upon ſuch contracts or wagers ſhall be reſtored to the perſon who ſhall pay the ſame, who ſhall be at liberty, within ſix months from the making of ſuch contract, or laying ſuch wager, to ſue for the ſame, with double coſts; and it ſhall be ſufficient for the plaintiff to alledge, that the defendant is indebted to the plaintiff, or has received to the plaintiff's uſe, the money or premium ſo paid, whereby the plaintiff's action accrued according to the form of this ſtatute, without ſetting forth the ſpecial matter. 7 *Geo.* II. C. 8. S. 1.

Perſons, who by this act ſhall be liable to be ſued, ſhall alſo be obliged to anſwer upon oath ſuch bill as ſhall be preferred againſt them in equity, for diſcovering any ſuch contract or wager, and the premium given. Sect. 2.

Every perſon who ſhall make any ſuch contract, upon which any premium ſhall be given for liberty to put upon, deliver, accept, or refuſe any public ſtock or ſecurities, or any contract in the nature of puts and refuſals, or ſhall lay any wager, except ſuch who ſhall *bonâ fide* ſue, and with effect proſecute, for the recovery of the premium paid by them, and alſo except ſuch as ſhall diſcover ſuch actions in any court of equity, ſhall forfeit *five hundred pounds*. And all perſons negociating or writing ſuch contracts, ſhall likewiſe forfeit *five hundred pounds*, which penalties may be recovered by action of debt or information, in any of his majeſty's courts of record at *Weſtminſter*; one moiety to his majeſty, and the other moiety to them who ſhall ſue for the ſame. Sect. 4.

No money or other conſideration ſhall be voluntarily given or received for the compounding any difference, for the not delivering or receiving any public ſtock or ſecurities, but all ſuch contracts ſhall be ſpecially executed; and all perſons who ſhall voluntarily compound ſuch difference, ſhall forfeit *one hundred pounds*, one moiety to his majeſty, and the other moiety to them who ſhall ſue for the ſame. Sect. 5.

No

No perſon who ſhall ſell ſtock to be delivered and paid for on a certain day, and which is refuſed and neglected to be paid for, ſhall be obliged to transfer the ſame; but it ſhall be lawful for ſuch perſons to ſell ſuch ſtock to any other, and to receive or recover from the perſon who firſt contracted for the ſame, the damage which ſhall be ſuſtained. 7 *Geo.* II. C. 8. S. 6.

It ſhall be lawful for any perſon, who ſhall buy ſtock to be accepted and paid for on a future day, and which ſhall be refuſed or neglected to be transferred; to buy the like quantity of ſuch ſtock of any other perſon, at the current market price, and to recover and receive from the perſon who firſt contracted to deliver the ſame, the damages ſuſtained. Sect. 7.

All contracts which ſhall be made for the buying or transferring of ſtock, whereof the perſon on whoſe behalf the contract ſhall be made to transfer the ſame, ſhall not, at the time of making ſuch contract, be actually poſſeſſed in his own right, or in the name of truſtees, ſhall be void: and every perſon on whoſe behalf, and with whoſe conſent any contract ſhall be made to ſell ſtock, whereof ſuch perſon ſhall not be actually poſſeſſed in his own name or in the name of truſtees, ſhall forfeit *five hundred pounds*, one moiety to his majeſty, and the other moiety to them who ſhall ſue for the ſame; and every broker, or agent, who ſhall negociate any ſuch contract, and ſhall know that the perſon, on whoſe behalf ſuch contract ſhall be made, is not poſſeſſed of ſtock, ſhall forfeit *one hundred pounds*, one moiety to his majeſty, and the other moiety to them who ſhall ſue for the ſame. Sect. 8.

Every perſon receiving brokerage in the buying and diſpoſing of ſtocks, ſhall keep a broker's book, in which he ſhall enter all contracts, with the names of the principal parties; and ſuch broker, who ſhall not keep ſuch book, or ſhall wilfully omit to enter any ſuch contracts, ſhall forfeit *fifty pounds*, one moiety to his majeſty, and the other moiety to them who ſhall ſue for the ſame. Sect 9.

Nothing in this act ſhall extend to any contracts for the purchaſe or ſale of ſtock, to be made with the privity of the accountant general of the court of Chancery, in purſuance of any decree or order of the ſaid court. Sect. 10.

Nothing in this act ſhall hinder any perſon from lending money on ſtock, ſo as no premium be paid more than legal intereſt. Sect. 11.

The above act was made perpetual by 10 *Geo.* II. C. 8.

It was hardly poſſible to frame an act, better calculated to ſuppreſs the pernicious practice of ſtock-jobbing, yet it is ſhamefully violated, and that daily, with impunity, juſtifying the remark made by foreigners, "that we have the beſt laws of any nation in the world, and the worſt executed." However, the merchant and the monied man may learn one uſeful leſſon from attending to the regulations concerning brokers, and the ſtatute againſt ſtock-jobbing, which is, that he can have no remedy whatever for any fraud or colluſion, unleſs he employs a licenſed broker. And that he may know which are licenſed, he need not have recourſe to a ſight of the ſilver medal, a liſt of the admitted brokers being annually printed by order of the lord-mayor and court of aldermen, which is hung up in one of the walks of the *Royal Exchange*, and in *Guildhall*, and at moſt of the reputable coffee-houſes near the exchange.

Of the Par of Monies.

MOST of what has hitherto been written concerning the par of coin is obſcure and confuſed: the greateſt part of the authors who have publiſhed any thing about it give the par of monies no longer current; however it is a thing not over difficult, as it only conſiſts in making the compariſon between the intrinſick value of the gold and ſilver coins of each country, and the price they paſs current at; it is therefore neceſſary that the exact weight and ſtandard of ſuch monies be firſt known. The celebrated

brated Sir *Iſaac Newton* publiſhed a tract of the ſtandard of foreign coins, which was printed at the end of Mr. *Arbuthnot*'s work; but ſo many alterations have ſince been made in the monies of *France*, *Spain*, and ſome other countries, that it is neceſſary to examine the laſt arrets that have been publiſhed about them to clear up this particular. As for example: The king of *Spain*, by a royal decree, raiſed the piſtole from thirty-two to thirty-ſix rials of plate, and by a ſubſequent decree, it was ordained that the dollars ſhould be current in his dominions at nine and $\frac{1}{2}$ rials inſtead of eight, which they paſſed at before, and theſe have ſince been raiſed to ten, and the piſtole to forty rials: which obſervation might be extended to ſeveral other ſpecies, but this would be both tedious and uſeleſs, we ſhall therefore give ſuch examples only as will ſufficiently and clearly demonſtrate the method by which all others may be found out.

The Par of Gold Coin between London *and* Amſterdam.

Of $1\frac{1}{2}$ mark of gold of the ſtandard of 22 carats are made in *England* $44\frac{1}{2}$ guineas, as Sir *Iſaac Newton* demonſtrated to the lords of the treaſury on the 21ſt of *September*, 1717; each guinea being then current at 21 ſhillings and ſixpence ſterling, but ſince it has been lowered to 21 ſhillings. At preſent 1000 new *Holland* ducats weigh 14 marks 1 ounce and $11\frac{3}{8}$ engels; each mark is of the ſtandard of 23 carats and a little more than 7 grains, from whence it follows, that there is as much pure gold in 1000 ducats as in $451\frac{6}{51}$ guineas. Commonly in the payments that are made among the citizens, a ducat paſſes in *Holland* for 5 guilders and 5 ſtivers current money, and according to this proportion, an *Engliſh* guinea, or 21 ſhillings ſterling, is worth 11 guilders and 12 ſtivers current money, of *Holland*; or $9480\frac{9}{13}$ ſhillings ſterling are equal in value to 5250 guilders; or one pound ſterling to about 36*s*. 11*d*. de gros current money; or if the agio be reckoned at $4\frac{1}{4}$ *per cent*. it will be found very near 35*s*. 3*d*. de gros bank money.

The Par between London *and* Amſterdam *of Silver Money.*

According to the afore-mentioned report made by the ſaid Sir *Iſaac Newton*, in the year 1717, $11\frac{1}{10}$ ounces of pure ſilver, and $\frac{9}{10}$ of an ounce of alloy made 62 ſhillings ſterling; in *Holland* 200 pieces of 3 guilders weigh 25 marks, 5 ounces $1\frac{5}{8}$ engels, and are of the ſtandard of 11 penny-weights; or in $1052\frac{200}{333}$ ſhillings ſterling there is as much fine ſilver as there is in the ſaid 200 pieces of 3 guilders, and the value of 20 ſhillings ſterling in 1717, was near to 38 ſch. current money of *Holland*.

If the compariſon be made by ducatons, or by *Holland* rixdales, inſtead of 3 guilder pieces, it will be found very near the ſame value; for if it be true, as I am informed, that 200 ducatons weigh 26 marks 3 ounces 15 engels, and their ſtandard is $11\frac{1}{4}$ penny-weight; and if 200 rixdales weigh 22 marks $6\frac{1}{2}$ ounces of the ſtandard of $10\frac{1}{2}$ penny-weight; when the 3 guilder pieces are fixed at 60 ſtivers, the intrinſick value of the ducaton will be 63 ſtivers $3\frac{2}{17}$ deniers, and the rixdales 50 ſtivers and almoſt 2 deniers.

The Par between France *and* Holland *for the Gold Coin.*

A mark of gold money, worth at preſent in *France* 720 livres, is exactly 30 louidors, and the ſtandard 21 carats 7 or $7\frac{1}{2}$ grains, we will take the medium when, at 21 carats $7\frac{1}{2}$ grains, each louidor ought to weigh $5\frac{1}{3}$ engels; thoſe coined in the year 1731 weigh 5 engels and 10 axen, which we may deem the true weight. In 1000 *Holland* ducats there is then as much pure gold as in $466\frac{20}{40}$ louidors. If the ducat is counted at 5 guilders 5 ſtivers current money, a louidor, or 24 livres *French*, is worth of *Dutch* money 11 guilders 5 ſtivers, and the 3 livre crown almoſt $56\frac{1}{4}$ de gros current money; or 64 *French* livres were, in 1731, of an equal value with 30 *Dutch* current guilders, and 16 *French* crowns of 6 livres are at a par with 15 three guilder pieces; or 30 ducats of *Holland* are worth 14 louidors. The proportions I here give are ſufficiently exact; for if

1000

1000 current guilders are reduced into *French* money, there will be found by the ſaid proportions only $\frac{1}{30}$ of a louidor, or $\frac{4}{115}$ of a *French* livre, leſs than by the intrinſick value; $\frac{4}{115}$ of a *French* livre are $\frac{1}{8}$ of a guilder.

If the agio of $\frac{1}{4\frac{1}{2}}$ *per cent.* upon the bank money be taken, the value of 3 *French* livres will be a ſmall matter leſs than $53\frac{7}{8}$ de gros bank money.

The weight of 1000 louidors of the ſun is 33 marks, 1 ounce of the ſtandard of 21 carats, 7 grains, *Koophandel van* Amſterdam, *2de Deel, pag.* 111. *ed.* A. 1727, by which it is ſeen that they are near of equal value with the new louidor.

The Par between France *and* Holland *of the Silver Money.*

The king of *France*, by an arret of the 25th of *May* 1726, fixed the mark of ſilver money at 49 livres 16 ſtivers, and ſince that time, I believe no alteration has been made, the ſtandard is almoſt 11 penny-weight, and that of the ancient crown of 9 to the mark was of 10 penny-weights and 22 grains, *Traité des Changes Etrangers, par Mr.* Dernis, Paris 1726. At preſent in *France* there are 6 livre crowns of $8\frac{3}{10}$ to the mark, and it is ſaid that the ſtandard is 11 penny-weights. In making the calculation it will be found, that in 200 three guilder pieces there is as much pure ſilver as in $213\frac{93}{210}$ *French* crowns of 6 livres, or each of theſe crowns is worth pretty near $56\frac{1}{4}$ ſtivers current money of *Holland*; this is very near the ſame value which we have found in the gold.

The ſilver pieces of 24 ſols, coined in *France* 1726 and 1727, only weigh $3\frac{1}{4}$ engels, and the value in *Dutch* money is $10\frac{15}{16}$ current ſtivers.

Almoſt all authors who have treated of a par, have taken for a foundation that the ancient crown of 3 livres or of 9 in a mark, *by the arret of the* 16*th of* September, 1666, *Mr.* Dernis, *Pag.* 4. was worth 100*d.* de gros of *Holland*, or that the mark of 11 penny-weights *French* money was worth 22 guilders 10 ſtivers; but at preſent by the pieces of 3 guilders the value of the ſaid mark is found to be 23 guilders 7 ſtivers, or that of a crown of 3 livres $103\frac{7}{8}$*d.* de gros current money; upon which footing the calculation may be made in the preſent time; for it ſhould be ſtated by the rule of three inverted; if, when the mark of money is fixed at 27 livres, the par is $103\frac{7}{8}$*d.* de gros, how much will the par be if the mark is worth $49\frac{4}{7}$. But it is eaſier to make the calculation by the crowns, becauſe it is found at preſent that there are $16\frac{3}{5}$ crowns, of 3 livres in a mark; ſo it is ſaid if $16\frac{3}{5}$ crowns are worth 23 guilders and 7 ſtivers current *Dutch* money, how much ſhall one crown be worth; and it will be found as aforeſaid, a little more than $56\frac{1}{4}$*d.* de gros. In the beginning of the year 1726 the par was at $67\frac{1}{2}$*d.* de gros; it may be ſeen then, that it is very eaſy to find the par, whether the king of *France* riſes or falls the price of the coin. In caſe that it changes not only the weight but the ſtandard, the direct rule of three ought to be ſtated by ſaying, the ancient ſtandard is to the par that is found, as the new ſtandard is to the par ſought for.

The Par between Liſbon *and* Amſterdam *for the Gold Coin.*

By an ordinance of Monſ. the Count de *Daun*, it is ſeen, that the old louidor of *France* weighed at *Milan* 5 penny-weights and 12 grains, and the cruzado of *Liſbon* 8 penny-weights and 18 grains; 1000 of the ſaid louidors weighed in *Holland* 21 marks 1 ounce and 15 engels, or each louidor 4 engels $11\frac{1}{3}$ azen; according to this proportion, the cruzado ought to weigh 6 engels $29\frac{2}{3}$ azen; if the ſtandard is reckoned, with Sir *Iſaac Newton*, at 21 carats 7 grains, as the ancient piſtoles of *Spain* and *France* were, *Koophandel van* Amſterdam, *2de Deel, Pag.* 111 *and* 831, there will be found as much pure gold in $358\frac{206}{249}$ cruzados as in 1000 ducats of *Holland*; and putting the ducat at 5 guilders and 5 ſtivers, the value of a cruzado will be 14 guilders 13 ſtivers and 1 denier current money; and becauſe the cruzado paſſes at *Liſbon* for 4800 reis, 400 reis are worth $48\frac{27}{31}$*d.* de gros current money, or a little more than $46\frac{1}{2}$*d.* de gros bank money, if the agio be taken at 5 *per cent.* or 47*d.* de gros, if the cruzado weigh 7 engels, as it is commonly reckoned. This may be done by a yet ſhorter method; for by the ducat it is found, that a mark of the ſaid cruzados is worth in *Holland* 338 guilders 9 ſtivers; and it is ſaid, if 160 engels are worth 338 guilders 9 ſtivers, how much ſhall 7 engels and

$29\frac{2}{5}$

29 $\frac{2}{3}$ azen be worth? *In a book printed at* Amſterdam, 1630, *intitled,* Sleutel des Koopmans, *Pag.* 318, *it is ſaid that the par is* 63 $\frac{1}{16}$ *d. de gros.*

A new Method to avoid the great Fractions.

In calculating the par, or in making the compariſon between coins, great fractions frequently intervene. As for example: We have found in 210 $\frac{8}{1}\frac{6}{8}\frac{6}{5}$ *Engliſh* crowns of 5 ſhillings ſterling, as much pure ſilver as in 213 $\frac{9}{1}\frac{3}{10}$ *French* crowns of 6 livres, or 1 crown of 6 livres has as much fine ſilver as $\frac{22}{27}\frac{43}{8}\frac{2024}{49}$ of an *Engliſh* one of 5 ſhillings, but the working of this with ſo great a fraction being very troubleſome, it may be changed for a leſs fraction that ſhall be almoſt of the ſame value, which may be expreſſed as in the following problem,

PROBLEM.

A great fraction being given to find another, whereof the denominator is leſs than a certain number given, ſo that the value of the fraction that has been found, is the neareſt that can be to that given.

I change the fraction given into another whoſe numerator is unity, and I do the ſame with the fraction which is found in the denominator, and ſo on.

I neglect for a moment the fractions of fractions that are found at the end, and by that will be had all ſimilar fractions, which are alternatively the one too big and the other too little, as may be ſeen in the ſubſequent example.

The fraction given being $\frac{3}{7}\frac{1}{9}\frac{4}{3}\frac{7}{3}$, it is demanded which is the fraction moſt like it whoſe denominator is leſs than 100.

But as I think our author's ſolution of his problem is neither ſo correct nor clear as it ſhould be, I have attempted to make it plainer and more exact, though before I proceed to the operation, it will be neceſſary to premiſe the following lemma.

To find a denominator to a given numerator which ſhall make it the neareſt fraction to a larger fraction before given, let the firſt given fraction be denoted by $\frac{n}{d}$, and the numerator to the new fraction be a, and its denominator x, then we have $\frac{a}{x} = \frac{n}{d}$ therefore $nx = ad$ and $x = \frac{ad}{n}$ which put into words gives this

Rule.

Multiply the numerator of the new fraction into the denominator of the large one, which then divide by the numerator of the great fraction, and you will have the denominator you ſought for your new numerator: Now in regard to the problem, firſt find the fraction whoſe numerator is unity, that ſhall be equal to $\frac{3}{7}\frac{1}{9}\frac{4}{3}\frac{7}{3}$, which by the foregoing lemma will be expreſſed $\frac{1}{1 \times \frac{7}{3}\frac{9}{1}\frac{3}{4}\frac{3}{7}} = \frac{1}{2\frac{1}{3}\frac{4}{1}\frac{9}{4}\frac{3}{7}}$ if now you reject from the denominator, the fraction of fractions, there is $\frac{1}{2}$ the neareſt (though too great) to $\frac{1}{2}\frac{4}{1}\frac{9}{4}\frac{3}{7}$ when the denominator muſt not exceed 4. But as the problem admits an higher one, we repeat the operation, thus $\frac{1}{2\frac{1}{2\frac{1}{1}\frac{4}{4}\frac{9}{9}}}$ where you only ſubſtitute for $\frac{1}{1}\frac{4}{4}\frac{9}{7}$ its value altered by the ſaid lemma to $\frac{1}{2\frac{1}{1}\frac{4}{4}\frac{9}{9}}$ and rejecting $\frac{1}{1}\frac{4}{4}\frac{9}{9}$ we have $\frac{1}{2\frac{1}{2}} = \frac{2}{5}$ which is too great, but the neareſt of any whoſe denominator does not exceed 50, to the given fraction;

fraction; but the work may be by the condition of the problem repeated again $\frac{2}{5\frac{1}{10}\frac{9}{149}}$ and for $\frac{9}{149}$ writing $\frac{1}{10}$ found as before, we have $\frac{2}{5\frac{1}{10}\frac{9}{149}}$ from which leaving out $\frac{9}{149}$ there is $\frac{2}{5\frac{1}{10}} = \frac{2}{\frac{51}{10}} = \frac{20}{51}$ which is too big, though it is the fraction sought: for if the work be again repeated, you will have a denominator which shall be 817.

N. B. It appears by inspection that the higher the denominator is, the nearer you approach to the truth, for there is less omitted in the denominator, so at last the work would converge into the given fraction.

Note also, that by the said lemma you may find a fraction of a given denominator, which shall be neareſt equal to a higher given fraction; and as this is of a peculiar use in fractional works, I shall give the rule it may be performed by.

Multiply the new denominator into the numerator of the first given fraction, then divide by the great denominator, and rejecting the remainder as inconsiderable, your quotient shall be your new numerator. By this you may prove the foregoing work, for if you chuse a denominator 51 and would find a numerator to make it neareſt to $\frac{1147}{7793}$, then $\frac{51 \times 3147}{7793}$ gives 20, as before found.

A Comparison of some COINS:

Of SILVER.

London 20 crowns of 5 shill. ſter.	worth 19 pieces of 3 guil.	*Amſterdam.* 100*l.* ſtr.	If reduced will be found less $\frac{2}{3}$ ſti.	will be found 1000 guil. more $\frac{1}{19}$ ſhil. ſtr.
Paris 16 crowns of 6 liv. Or 337 cro. of 6 liv.	worth 13 pieces of 3 guil. worth 316 pieces of 3guil.	*Amſterdam.* Crowns. 1000 of 3 liv. 1000 of 3 liv.	*Dutch* Mon. less $5\frac{1}{3}$ ſti. less $1\frac{1}{12}$ den.	*French* Mon. 1000 guild. more $8\frac{1}{2}$ ſols. 1000 guild. more $\frac{1}{9}$ ſols.
Paris 76 crowns of 6 liv.	worth 75 cro. of 5 ſhill. ſtr.	*London.* Crowns. 1000 of 3 liv.	*Engliſh* Mon. more $3\frac{1}{4}$*d.* ſt.	*French* Mon. 100*l.* ſtr. less $5\frac{4}{7}$ ſols.

Of GOLD.

London 93 guineas,	worth 206 ducats	*Amſterdam.* 100*l.* ſt.	If reduced will be found more 4 den.	will be found 1000 guil. less $\frac{1}{4}$ ſt.
Paris. 14 louidors,	worth 30 ducats	*Amſterdam.* Crowns 1000 of 3 livr.	*Dutch* Mon. more $3\frac{3}{4}$ ſti.	*French* Mon. 1000 guild. less $5\frac{1}{7}$ ſols.
London 30 guineas,	worth 31 louidors	*Paris.* 100 ſt.	*French* Mon. less $21\frac{2}{5}$ ſols.	Crowns *Engliſh* Mon. 1000 of 3 liv. more $1\frac{1}{6}$ ſt.

Though Mr. *Ricard* has not explained the foregoing tables, I have judged it neceſſary to do it, that they may thereby be rendered uſeful.

In the firſt line, the 20 *Engliſh* crowns are not worth quite 57 guilders, therefore at that rate 100*l.* ſterling muſt produce leſs than it would have done had the 100 ſhillings and 57 guilders been exactly equal, and for the ſame reaſon muſt make ſomething more ſterling money; and to calculate the deficiency of the guilders, firſt find what part of a guilder $\frac{2}{3}$ of a ſtiver is, which is eaſily diſcovered to be $\frac{2}{3}$ of $\frac{1}{20}$, or $\frac{2}{60}$, or $\frac{1}{30}$, and then the ſtating will be,

As 100*l.* —— $\frac{1}{30}$ —— 5*l.*
Or as 20*l.* —— $\frac{1}{10}$ —— 1*l.* to $\frac{1}{600}$.

Therefore the guilders are only $56\frac{599}{600}$. And by the ſame reaſoning, the true differences of the 2d line in the *firſt*, and of the third line in the *ſecond* table may be diſcovered; but the others being of a different nature; the method for them may be demonſtrated by the third line in the *firſt* table, where 76 *French* crowns of 6 livres are worth a little more than 375*s.* ſterling; therefore 100*l.* ſterl. muſt accordingly make the *French* money leſs, and to find the real value of 456 livres in ſhillings ſterling, ſay,

Fr. Cro.	*d.*	*Fr.* Cro.
As 1000 of 3 liv.	—$3\frac{1}{4}$ or $\frac{13}{48}$ of a ſhill.	——76 of 6 livres to the ſum ſought.
3		6
3)3000		3)456
8)1000		8)152
125		19

Then $\frac{13 \times 19}{125 \times 48} = \frac{247}{6000}$ which muſt be added to 375 ſhillings to make the true value of 456 livres.

A Compariſon between fine Gold and Silver.

I ſhall not treat here of the compariſon made between gold and ſilver by the ancient *Greeks* and *Romans*, but commence my account of it much nearer our own times. *Agricola*[a] ſays that a hundred years before he wrote, or about 1440, one part of pure gold was given in *Germany* for thirteen ſimilar parts of pure ſilver[b]. In the year 1457, it was regarded as a ſettled price, that had, notwithſtanding the ſeveral alterations in the coins, ſubſiſted for ſome time; the giving 84 pennings of *Landſberg* money for a guilder of the *Rhine*[c], 100 of theſe pennings weighing a mark of *Erfurt*, the ſtandard was $2\frac{1}{4}$ pennyweights[d]; if the mark of *Nuremberg* weighed at that time 152 engels[e], the mark of *Erfurt* would be about 149 engels that weight[f], or the guilder of the *Rhine* $23\frac{1}{3}$ of fine ſilver. In the year 1461, the mark of ſilver at *Erfurt* contained $7\frac{1}{3}$ *Rheniſh* guilders[g], or the value of the ſaid guilder a little leſs than $21\frac{1}{3}$ engels pure ſilver. In the year 1528, a mark of fine gold of *Nuremberg* was worth 95 guilders of the *Rhine*, and a mark of fine ſilver a little more than $8\frac{1}{2}$ guilders of the *Rhine* called golden ones not coined[h]; ſo that 11 marks of pure ſilver were worth one mark of pure gold. In the golden guilder of the *Rhine* there were $2\frac{1}{16}$ engels that weight, of fine gold[i], or the guilder of the *Rhine* at that time was eſteemed as $1\frac{1}{8}$ ounce of pure ſilver; from that time to the preſent, the price of gold in regard to that of ſilver is augmented in theſe parts, about $\frac{1}{3}$: An author aſſerts, that in 1390, gold, in reſpect to ſilver, had four times leſs value than in 1687[k], but the error proceeded from this, that he made no difference between the preſent *Holland* guilder and the ancient one of the *Rhine*.

[a] Dan. Angelocra. doctri. de ponder. Monet. Cap. 2. Pag. 28 and 29 Francf. *A.* 1628. [b] Id. de pretio Metallorum, P. 29. [c] *Hartungi Kamermeiſteri* Annales *Erfurtenſes* col. 1223. Vide *Menkenii* Scriptor. Rerum German. Tome 3. *Leipſ. A.* 1730. [d] Id. Col. 1186. [e] Angelocra. P. de pretio Metal. Pag. 47. [f] Id. Pag. 26. ex *Agricol.* [g] Annal. *Erfurt.* Col. 1231. [h] Angelocrat. P. 65. ex Bilib. *Pirkheim.* Æſtimatio priſcorum Nummorum. [i] Angelocra. ex *Agricol.* & *Arickh.* P. 34 and 65. [k] *Simon de Uries* Groot. Hiſtoriſch. Magazyn, Pag. 580, *Amſt.* P. 1688.

In

In 1717, the coined ſilver in *England* was on ſuch a footing, that $15\frac{183}{220}$ marks of pure ſilver was of the ſame value with a mark of pure gold; in *France* 15 marks of fine ſilver was reckoned as a mark of fine gold; in *Holland* $14\frac{7}{8}$ marks: in the *Eaſt-Indies*, in ſome places, 12 marks; as in the kingdom of *Siam* in 1688. *Deſcription du dit Royaume par* M. de la Loubere, p. 221, *Amſt.* 1770. And in *China* and *Japan* about 10 marks. Suppoſing the value of ſilver to be ſettled, that of gold it is ſeen was greater in *England* than elſewhere; ſtrangers made their payments in that metal; but becauſe ſilver was more valuable abroad, the *Engliſh* ſent their's to foreigners; and for this reaſon the ſilver coin became ſo ſcarce at home, as to occaſion the diminiſhing the value of the guinea, by lowering it to 21 ſhillings, as has been before obſerved; for by trade, gold and ſilver would naturally paſs from thoſe countries where their value was leſs, to them where it was higher.

In 1000 *Dutch* ducats there are 334 carats $9\frac{1}{2}$ grains of pure gold, and *if theſe are worth* 5250 *guilders, how much ſhall* 24 *carats be worth?* and the anſwer will be 367 guilders and 7 ſtivers, the value of a mark of pure gold in coin. We have before found by the *Dutch* 3 guilder pieces that a mark of 11 pennyweights pure is worth 23 guilders and 7 ſtivers current money; and the mark of fine ſilver has been found worth a little leſs than 25 guilders and $9\frac{1}{2}$ ſtivers. In the ſame manner it is ſaid, *if* $21\frac{5}{8}$ *carats of pure gold are eſteemed in* France *at* 720 *livres, how much ſhall* 24 *carats be worth?* and, *if* 11 *pennyweights of fine ſilver are worth* $49\frac{4}{5}$ *livres, how much ſhall* 12 *pennyweights be worth?* By diviſion it will be found as follows; ſuppoſing that in the *Engliſh* ſilver coin there had been no alteration made ſince 1717.

In { *England* 15 marks 1 ounce $13\frac{1}{2}$ engels, / *France* 14 marks 5 ounces $13\frac{3}{8}$ engels, / *Holland* 14 marks 6 ounces 4 engels, } fine ſilver for 1 mark of fine gold.

From whence it is ſeen that Mr. *Dernis*, page 2, and Mr. *Wiertz* are not exact, becauſe they ſay, that the proportion between pure gold and ſilver in *Holland* is fixed at $14\frac{1}{3}$; and it is alſo found in this laſt-mentioned author, pag. 491, that the mark of fine gold is fixed in *Holland* at 355 guilders current money, which is very true, but if the value of a ducat is taken to be 5 guilders 5 ſtivers, as it commonly paſſes, there is an agio of 6 *per cent.* in the ſpecie of ducats; I know very well that theſe riſe and fall a trifle; but the agio on gold muſt not be neglected, otherwiſe the ducat is never worth above 4 guilders 19 ſtivers.

This I think ſufficient to give an idea of the par of monies, and I ſhall finiſh it with an inſtance of an arithmetical queſtion abbreviated, concerning *Spaniſh* wool; as it is ſomething curious, and may be inſtructive.

It is known to all concerned in that trade, that the wools of *Germany* and *Poland* are ſold at *Amſterdam* with an allowance of fifteen months diſcount, and one *per cent.* for prompt payment; for which the merchants deduct exactly a tenth; and for thoſe of *Spain* 24 lb. are always allowed for tare on 175 lb. beſides a deduction of twenty-one months diſcount, and one *per cent.* for prompt payment; and in order to inveſtigate a ſhorter method for calculating theſe abatements on the *Spaniſh* wools than has hitherto been practiſed, without neglecting the fraction which is often found in the tare, our author, Mr. *Samuel Ricard*, invented the following

Rule.

1ſt. Multiply the pounds by the price, and from the product ſubtract a quarter part, and the remainder will be expreſſed by *A.*

2d. Take 1 *per mil.* from *A.* and the 10th muſt be deducted; the remainder will be *B.* The difference of *A. B.* will be the ſum ſought for, which will ſurpaſs the true anſwer upon 11000 guilders about half a ſtiver.

3d. To correct this, there muſt be taken away from the guilders of *B.* $\frac{1}{3}$. and ſubtract as many deniers as there are of guilders for the remainder, and it will come to about $1\frac{1}{3}$ denier too little on 1,000000 guilders worth of wool.

Example.

Example.

It is demanded how much ought to be paid for ſome bales of wool, which weigh, after the tare marked on the bales is deducted, 9975 lb. tare 24 lb. on 175 lb. and each lb. at 31½ ſtivers, with twenty-one months diſcount, and one *per cent.* for prompt payment? The anſwer is 11772 guilders, 6 ſtivers, and 12 deniers.

Solution.

9975
29925
4987 : 8

2|0)31421|2 : 8

Guild. 15710 : 12 : 8
¼3927 : 13 : 2

A. guild. 11|782 : 19 : 6
20

15|659
16

10|550

guild. 11 : 15 : 10
1/10 1 : 3 : 9

B. guild. 10 : 12 : 1

A. guild. 11782 : 19 : 6
B. guild. 10 : 12 : 1

guild 11772 : 7 : 5
correction : : 9

Anſwer guild. 11772 : 6 : 12

Of Arbitrations of Exchange.

ARBITRATION, a conſtruction of the *French* word *arbitrage*, in exchanges, has been variouſly defined by the ſeveral authors who have treated upon it. Monſ. *De la Port, Science des Negocians. Sam. Ricard, Traité gen. de Commerce. J. Laru.* P. 545. Monſ. *de Mondotteguy Traité des Arbitrages.* Mr. *J. P. Ricard, le Négoce d'Amſterdam*, P. 640.

One ſays it is a combination or conjunction made of many exchanges, to find out what place is the moſt advantageous to remit or draw on.

Another deſcribes it, by ſaying it is only the foreſight of a conſiderable advantage which a merchant ſhall receive from a remittance or draught, made on one place preferably to another.

A third conſtrues it to be a truck which two bankers mutually make of their bills upon different parts, at a conditional price and courſe of exchange.

According to a fourth, it is the negociation of a ſum in exchange, once or oftener repeated, on which a perſon does not determine till after having examined by ſeveral rules, which method will turn beſt to account.

And though theſe ſeveral diſtinctions are couched in different terms, they ſeem, if rightly conſidered, to have the ſame meaning, whereof ſome may be counted the text on which the others ſerve as comments or expoſitions.

Before any perſon applies himſelf to the ſtudy of this ſubject, it is neceſſary that he ſhould be well ſkilled in all the practical operations, in regard to the reducing of the ſterling money of *England* into the foreign monies of exchange, and of account of all places of *Europe*, according to the direct courſes of exchange eſtabliſhed for theſe purpoſes, and *vice verſâ.*

Alſo, that he ſhould be acquainted with the methods of converting ſterling money into the monies of exchange, and of account, of all other places of commerce, where-

with

with *England* has no direct eſtabliſhed courſes of exchange, but is under the neceſſity of making uſe of the intermediate exchange of other places: Together with the nature of the *agios*, and the manner of converting their bank monies into current, and the reverſe.

That he ſhould be able to calculate the par of all foreign monies throughout *Europe* with thoſe of every diſtinct country, either according to the direct, or intermediate exchange, which makes a much greater variety of caſes, than thoſe who are not thoroughly acquainted with this extenſive ſubject can imagine.

It is neceſſary likewiſe, as a preliminary to the practice of arbitration of exchanges, to know the intrinſic value of foreign coins, according to the moſt accurate *aſſays* which have been made for that purpoſe.

Finally, it is requiſite to underſtand the general natural cauſes of the riſe and fall of the courſes of exchange between nation and nation, or between one trading city and another in the ſame nation.

Arbitrations are divided by the writers on them into ſimple and compound, of which I ſhall ſuccinctly give ſome examples, and endeavour, as plainly as I can, to illuſtrate ſuch rules for their operation as may render it eaſy both to the apprehenſion and performance; my predeceſſors having conſigned me this taſk by unanimouſly leaving the ſolution of their queſtions too much in the dark to be comprehended by moſt of their readers, as they have contented themſelves with replying to the queries, without ſhewing their method of performing, and have thereby rendered abortive their pretended deſign of conveying inſtruction; which could no otherwiſe be done than by a delivery of their ideas and conceptions in ſuch a manner as might leave them open, and eaſy to be followed and practiſed.

A ſimple, or ſingle, *arbitration*, is to be wrought by the direct, or inverted rule of three; and to diſtinguiſh which of theſe rules is to be uſed in working any queſtion relative thereto, it muſt be obſerved:

1. That an arbitration muſt be cyphered by the direct rule of three when the *firſt* term of ſtating is more than the *third*, and that the quotient is leſs than the middle term. And,

2. This rule muſt be uſed when the *firſt* term is leſs than the *third*, and the quotient is more than the middle one.

And the following remarks will ſhew when the indirect, or inverted rule, is to be followed.

1ſt. The queſtion muſt be worked by the inverted rule of three when the *firſt* term is leſs than the *third*, and the quotient leſs than the middle number.

2d. The operation muſt be by this rule, when the *firſt* term is more than the *third*, and the quotient more than the middle term.

And whether the arbitrations be ſimple or compound, a price of exchange muſt always be ſuppoſed, when a re-imburſement is ordered on any other place than that from whence it is directed.

Whatſoever number of figures enter into a compound arbitration queſtion, the firſt and laſt muſt be of the ſame ſpecies, and the rules muſt be commenced by the ſpecies ſought for.

Theſe maxims being well underſtood, and applied to the examples, will facilitate the operation of the rules of arbitration to thoſe who pay any attention to them.

And as the uſe of ſome characters inſtead of words will conſiderably abbreviate the work in the ſolution of the ſubſequent examples, I have employed them to this purpoſe, and ſhall here explain them once for all.

$\times$ ſignifies multiplied by, as 10×54, is 10 multiplied by 54.

A number above a line, with another under it, ſpecifies that the uppermoſt muſt be divided by that beneath, or the numerator by the denominator, from whence $\frac{24 \times 67 \times 19}{15 \times 28 \times 12}$ ſignifies, that 24 multiplied by 67, multiplied by 19, muſt be divided by 15 multiplied by 28, multiplied by 12; and $\frac{54}{234\frac{151}{993}}$ denotes, that 54 is to be divided by 234, increaſed by $\frac{151}{993}$.

$=$ ſignifies, equal to, as $10 = 5 \times 2 = 8 \times \frac{5}{4}$.

This premiſed, I proceed to my propoſed

First

First Example.

A. of *Lyons* orders *B.* of *Cadiz* to draw upon him at 76 ſols *per* dollar, provided at the ſame time he can remit him on *London*, at 42*d.* ſterling alſo *per* dollar, but as *B.* drew at 75½, it is demanded at what exchange he may remit on *London* to complete this order; and this is anſwered by the direct Rule of Three as follows:

If 76 ſols give 42*d.* ſterling, what ſhall 75½ ſols give?

42

150
300
21

76)3171(41 55/76*d.* ſterl. anſwer.
304

131
76

55

Second Example.

A. of *Oporto* had orders to draw on *Rouen*, at 490 rees *per* crown of 60 ſols, provided he could at the ſame time remit on *Leghorn* at 770 rees *per* dollar; but as on receipt of the ſaid order he could get no more for his bill than 488 rees, it is demanded at what price he ought to remit on *Leghorn*, to recompence the ſaid diminution in his draughts; which is ſolved by the inverted Rule of Three, in the following manner.

If 488 rees——770——490

770

34160
3416

490)375760(766 42/49 or 6/7, the anſwer.
343

327
294

336
294

42

Third Example.

To be anſwered by the Double Rule of Three.

A. of *Amſterdam* orders his friend at *Madrid* to remit him upon *Lyons*, at 64 ſols *Tournois* for a new dollar of 340 maravadis, and to draw upon him at 100*d.* de gros *per* ducat of 375 maravadis. It is demanded at what price the exchange turns out to him between *Amſterdam* and *Lyons*.

The

The common way of working it.

64 sols ——— 340 marav.
375 marav. ——— 100*d.* ——— 60 S.

320 | 34000
448 | 60
192 |
24000 Divisor. | 2040000 Dividend, therefore $\frac{2040000}{24000} = \frac{2040}{24}\ 85$ = groots.

And the most compendious method by abridging the numbers I shall thus shew.

If $\left.\begin{matrix}44\\374\end{matrix}\right\}$ are equal to $\left\{\begin{matrix}340 \text{ mar.}\\100 \text{ groots}\end{matrix}\right|\left.\begin{matrix}16 \text{ sols}\\15 \text{ mar}\end{matrix}\right\}$ must be equal to $\left\{\begin{matrix}85 \text{ maravadis.}\\4 \text{ groots, then}\end{matrix}\right.$

Quere 60 sols as before. But to reduce the work lower still, it appears that you may divide a member on each side of the last equation by 4, and another on each side also by 5, therefore few will have 4 sols 17 mar.

3 mar. 1 groot, where

4 multiplied by 3 is in the same *ratio*, or proportion, to 17×1 or 17, as 64×375 is to 340×100. But as the answer was found by multiplying 60 into the last *ratio* $\left(\text{or } \frac{340\times100}{64\times375}\right)$ so it may be likewise had by multiplying the 60 into the foregoing *ratio*, *viz.* $\frac{17}{12}$ whence we have the work brought into this small compass $\frac{60\times17}{12}$, which may be yet more contracted, as 60 and 12 are commensurable by 6, and will become $\frac{10\times17}{2} = 85$, the same as before. This well observed fully explains the method for contracting the most extensive compound arbitrations, as well as these simple ones. The manner of stating the compound ones I shall give in another place.

Fourth Example.

B. of *Amsterdam* gives an order to *E.* at *Cadiz*, to remit on *Hamburgh* at 124 gros lubs for 1 ducat of 375 maravadis, and to draw for him at 126 groots de gros for the said ducat. It is demanded at what price the exchange will be between *Amsterdam* and *Hamburgh*? Answer at $32\frac{16}{31}$ stivers *per* daalder of 32*s.* lubs.

31
For 124 gros lubs = 1 ducat.
1 ducat = 126 groots of *Amsterdam* — 32*s.* lubs.

8 | 8

31)1008(32$\frac{16}{31}$ answer.
93
78
62
16

The four preceding examples may suffice to shew the different methods of working by the direct, inverted, and double rule of three; but those that follow being more complex, and their operations more difficult to be reduced into as small a cyphering as what

what has been juſt now done, and the common practice ſhews, I have borrowed the aſſiſtance of the following tables from Mr. *Samuel Richard*, as he did the principles of them from another, of which he himſelf gives the ſubſequent account.

" It is ſome years ſince, that Monſieur *John Henry Laſkoſky* delivered a memorial into " the late duke of *Orleans*'s hands, then regent of France, ſucceeded by a ſecond, pre- " ſented by the marquis *de Grancey*; in both which he offered to communicate to the " publick a very ſhort and uſeful method for calculating of arbitrations, which he " termed *The principal Part of Arithmetick*; provided his royal highneſs would be pleaſed " to appoint him ſecretary to the council of trade. In the mean time, he kept the de- " monſtration of his problem a ſecret, though with offers to diſcloſe it, if the regent " would condeſcend to grant him a private audience. In the firſt memorial there was a " fragment of three tables for the exchanges between *France*, *Spain*, and *Holland*; and " in the ſecond there was alſo a part of three other tables, for the exchanges of *Genoa*, " *Lyons*, and *Venice*; but whether a want of friends or other reaſons impeded his ſuc- " ceſs, he never was able to obtain his requeſt. The copy of theſe memorials is fallen " into our hands, and we have diſcovered the true foundation, not very difficult to be " found out: I obſerve in this method, 1ſt, That the author, from the over care he took " to hide the origin of his tables, fell into an inconvenience, that induced him to alter " or change his own rule. 2dly, That it requires more tables, and theſe greatly ex- " tended, to ſuffice for uſe on the principal places of exchange. 3dly, If any one " would calculate with exactneſs, he cannot expect profit and loſs in the ſame table, " and to remedy theſe defects, we have compoſed the following tables, which may " ſerve for all parts, that can be propoſed, if the trouble is only taken to put them into " the Table Number IV. which is no ways difficult to be effected; and not to make a " ſecret of this projection, we have placed the numbers ſo clearly, that a mathemati- " cian will immediately perceive the ſource. Our manner then is ſuch, that all perſons " may do it, without over much attention, provided they are maſters only of the firſt " four rules of arithmetick, and it will even ſuffice that they know addition and ſub- " traction in entire numbers. If any one is deſirous of extending or making the Table " Number I. greater, it is only neceſſary for him that makes the calculation to have a " knowledge of the coins uſed in exchanges."

A Rule for what is received, and for what is given.

If the money of the place remitted to is fixed, and the exchange varies in that from whence the remittance is made, then it muſt be written *given*; as for example, a merchant at *Amſterdam* remits on *London*, *Paris*, *Cadiz*, &c. in which three laſt places, the coin is fixed, with reſpect to the firſt; but if the ſpecie of the place remitting is fixed, and that the exchange of thoſe, where the remittance is made to, riſes and falls, as from *Amſterdam* on *Dantzick*, *Coningſbergh*, &c. it ought to be written *received*.

TABLE

TABLE I.

		¼	½	¾			¼	½	¾			¼	½	¾
25	468	512	554	597	64	4551	4568	4585	4601	103	6617	6628	6638	6649
26	639	680	721	762	65	4618	4635	4651	4668	104	6650	6670	6680	6691
27	803	843	880	922	66	4684	4701	4717	4734	105	6701	6711	6722	6732
28	961	999	1037	1075	67	4750	4766	4782	4798	106	6742	6752	6762	6773
29	1112	1150	1187	1224	68	4814	4830	4840	4862	107	6783	6793	6803	6813
30	1260	1296	1332	1367	69	4877	4893	4909	4924	108	6823	6833	6843	6853
31	1403	1437	1472	1506	70	4940	4955	4971	4986	109	6863	6873	6883	6893
32	1540	1574	1608	1641	71	5002	5017	5032	5047	110	6903	6913	6923	6932
33	1674	1707	1739	1772	72	5062	5077	5092	5107	111	6942	6952	6962	6971
34	1804	1836	1867	1899	73	5122	5137	5152	5167	112	6981	6991	7001	7010
35	1930	1961	1991	2022	74	5181	5196	5211	5225	113	7020	7029	7039	7049
36	2052	2082	2112	2142	75	5240	5254	5268	5283	114	7058	7068	7077	7087
37	2171	2200	2229	2258	76	5297	5311	5326	5340	115	7096	7105	7115	7124
38	2287	2315	2344	2372	77	5354	5368	5382	5396	116	7134	7143	7152	7162
39	2400	2427	2455	2482	78	5410	5424	5438	5452	117	7171	7180	7189	7199
40	2510	2537	2564	2590	79	5465	5479	5493	5506	118	7208	7217	7226	7235
41	2617	2643	2669	2696	80	5520	5533	5547	5560	119	7244	7254	7263	7272
42	2721	2747	2773	2798	81	5574	5587	5601	5614	120	7281	7290	7299	7308
43	2824	2849	2874	2899	82	5627	5640	5654	4667	121	7317	7326	7335	7344
44	2924	2948	2973	2997	83	5680	5693	5706	5719	122	7353	7361	7370	7379
45	3021	3045	3069	3093	84	5732	5745	5758	5770	123	7388	7397	7406	7414
46	3117	3140	3164	3187	85	5783	5796	5809	5821	124	7423	7432	7441	7449
47	3210	3233	3246	3279	86	5834	5847	5859	5872	125	7458	7466	7475	7484
48	3301	3324	3346	3369	87	5884	5897	5909	5921	126	7493	7501	7510	7518
49	3391	3413	3435	3457	88	5934	5946	5958	5971	127	7527	7536	7544	7553
50	3479	3500	3522	3543	89	5983	5995	6007	6019	128	7561	7570	7578	7586
51	3565	3586	3607	3628	90	6031	6043	6055	6067	129	7595	7603	7612	7620
52	2649	3670	3691	3711	91	6079	6091	6103	6115	130	7628	7637	7645	7653
53	3732	3752	3773	3793	92	6127	6139	6150	6162	131	7662	7670	7678	7687
54	3813	3833	3853	3873	93	6174	6185	6197	6209	132	7695	7703	7711	7719
55	3893	3912	3932	3951	94	6220	6232	6243	6255	133	7728	7736	7744	7752
56	3971	3990	4009	4029	95	6266	6278	6289	6300	134	7760	7768	7776	7784
57	4048	4067	4086	4105	96	6312	6323	6334	6346	135	7793	7800	7808	7816
58	4123	4142	4161	4179	97	6357	6368	6379	6390	136	7824	7831	7840	7848
59	4198	4216	4234	4252	98	6401	6412	6423	6434	137	7856	7864	7872	7880
60	4270	4289	4307	4324	99	6445	6456	6467	6478	138	7888	7896	7903	7911
61	4342	4360	4378	4395	100	6488	6500	6511	6521	139	7919	7927	7935	7943
62	4413	4430	4448	4465	101	6532	6543	6554	6564	140	7950	7958	7966	7973
63	4482	4500	4517	4534	102	6575	6586	6596	6607	141	7981	7990	7997	8004

TABLE II.

LONDON.

33s. od	½d.		33s. 11d.	½d.		34s. 10d	½d.		35s. 9d	½d.		39s. 8d.	½d.	
1	2466	2471	34s. od	2585	2590	11	2701	2706	10	2814	2819	9	2924	2928
	2477	2482		2596	2601		2711	2716		2824	2829		2933	2938
2	2488	2493	1	2606	2612	35s. od	2721	2727	11	2834	2839	10	2943	2948
3	2499	2504	2	2617	2622	1	2732	2737	36s. od	2844	2849	11	2953	2958
4	2510	2515	3	2627	2633	2	2742	2747	1	2854	2859	37s. od	2963	2968
5	2520	2526	4	2638	2643	3	2752	2758	2	2864	2869	1	2973	2977
6	2531	2537	5	2649	2654	4	2763	2768	3	2874	2879	2	2982	2987
7	2542	2547	6	2659	2664	5	2773	2778	4	2884	2889	3	2992	2997
8	2553	2558	7	2669	2675	6	2783	2788	5	2894	2899	4	3002	3007
9	2564	2569	8	2680	2685	7	2793	2798	6	2904	2909	5	3011	3016
10	2574	2580	9	2690	2696	8	2803	2809	7	2914	2919	6	3021	3026

TABLE III.

HAMBURGH.

Shil	1/72	1/80	3/72	5/72	3/80	7/72	9/72	5/80	11/72	13/72	7/80	1 1/72
31	1411	1420	1429	1446	1455	1463	1481	1489	1498	1515	1524	1532
32	1549	1557	1566	1583	1590	1600	1516	1622	1633	1649	1658	1666
33	1682	1693	1699	1715	1723	1731	1748	1750	1764	1780	1788	1796
34	1812	1820	1828	1844	1852	1860	1875	1883	1891	1907	1914	1922
35	1937	1945	1953	1968	1976	1984	1999	2007	2014	2029	2037	2045

TABLE IV.

Amsterdam, Antwerp, Paris, &c.

Amsterdam and *Antwerp.* | *Antwerp* and *Paris.*
Amsterdam and *Paris.* | Number fixed 6489.

If you take for *Paris, London, Cadiz,* or *Venice,* this makes no alteration, and the fixed number shall be the same.

Amsterdam, Venice, and *Lyons.*

Amsterdam and *Venice.* | *Amsterdam* and *Lyons.*
Venice and *Lyons.* | Number fixed 6489.

Amsterdam,

Amſterdam, Paris, and *Hamburgh.*

First Caſe.

From *Amſterdam* on *Hamburgh* and *Paris.*
From *Hamburgh* on *Paris* and *Amſterdam.*
From *Paris* on *Amſterdam* and *Hamburgh.*

Amſterdam and *Hamburgh.*	*Amſterdam* and *Paris.*
Hamburgh and *Paris.*	Number fixed 1470.

This may ſerve likewiſe for *Amſterdam, Hamburgh,* and *Venice*; but you muſt take half of the deniers lubs, which are given at *Hamburgh* for a ducat, and inſtead of *Paris,* you muſt read from *Venice.*

Second Caſe.

From *Amſterdam* on *Paris* and *Hamburgh.*
From *Hamburgh* on *Amſterdam* and *Paris.*
From *Paris* on *Hamburgh* and *Amſterdam.*

Amſterdam and *Paris.*	*Amſterdam* and *Hamburgh.*
½ *Paris* and *Hamburgh.*	Number fixed 8250.

Amſterdam, London, Paris, &c.

Amſterdam and *London*	Number fixed 291.
London and { *Paris,* *Venice,* *Genoa,* *Leghorn,*	{ *Paris,* *Venice,* *Genoa,* *Leghorn,* } and *Amſterdam.*

Amſterdam, London, and *Spain.*

Amſterdam and *London.*	*Amſterdam* and *Spain.*
London and *Spain.*	Number fixed 1104.

Amſterdam, London, and *Liſbon.*

Amſterdam and *London.*	*Amſterdam* and *Liſbon.*
London and *Liſbon.*	Number fixed 4270.

Amſterdam, Genoa, and *Venice.*

Amſterdam and *Genoa.*	*Venice* and *Amſterdam.*
Genoa and *Venice.*	Number fixed 6454.

Amſterdam, Dantzick, and *Hamburgh.*

Amſterdam and ½ *Dantzick.*	*Dantzick* and *Hamburgh.*
Amſterdam and *Hamburgh.*	Number fixed 2510.

Amſterdam,

Amſterdam, *Liſbon*, and *Lyons*.

Amſterdam and *Liſbon*.	*Lyons* and *Amſterdam*.
1 *Liſbon* and *Lyons*	Number fixed 6489.

But if the change from *Liſbon* on *Lyons* exceed 567 reis, take $\frac{1}{8}$ inſtead of $\frac{1}{4}$, and the fixed number will be 3479.

Amſterdam, *Paris*, and *Spain*.

Amſterdam and *Paris*.	*Spain* and *Amſterdam*.
$\frac{1}{4}$ from *Paris* and *Spain*.	Number fixed 2876.

That is, whatever *French* livres are given or received for a piſtole of *Spain* muſt be reduced into ſols, and the quarter part taken.

There might be choſen many other places, but to be ſhort, we have taken no more than two particular caſes, which we have in the 7th and 8th propoſitions.

Berlin, *Amſterdam*, *Genoa*, *Turin*, *Geneva*, *Frankfort*, and *London*.

Berlin and *Amſterdam*.	*Turin* and *Genoa*.
Amſterdam and *Genoa*.	*Geneva* and *Frankfort*.
Turin and *Geneva*.	*London* and 10 times *Berlin*.
Frankfort and *London*.	Fixed number 8193.
Proviſion.	
Profit.	

Genoa, *Venice*, *Florence*, *Leghorn*, *Novi*, *Milan*, *Amſterdam*, and *London*.

$\frac{1}{2}$ of *Leghorn* and *Novi*.	*Genoa* and *Venice*.
Milan and *Amſterdam*.	*Venice* and *Florence*.
Amſterdam and *London*.	*Florence* and *Leghorn*.
Proviſion.	$\frac{1}{2}$ *Milan* and *Novi*.
Profit.	Number fixed 9549.

For the proviſion at $\frac{1}{3}$ *per cent.* the fixed number is $14\frac{1}{2}$; and at $\frac{1}{2}$ *per cent.* $21\frac{3}{4}$.

The Profit TABLE V.

per C.		1/10	2/10	3/10	4/10	5/10	6/10	7/10	8/10	9/10
0	0	4	9	13	17	22	26	30	35	39
1	43	48	52	56	60	65	69	73	77	82
2	86	90	95	99	103	107	111	116	120	124
3	128	133	137	141	145	149	154	158	162	166
4	170	175	179	183	187	191	195	199	204	208
5	212	216	220	224	228	233	237	241	245	249
6	253	257	261	265	269	273	278	282	289	290
7	294	298	302	306	310	314	318	322	326	330
8	334	338	342	346	350	354	358	362	366	370
9	374	378	382	386	390	394	398	402	406	410
10	414	418	422	426	430	434	438	441	485	449
11	453	457	461	465	469	473	477	480	484	488

The

The Loſs TABLE VI.

per C.		1 To	2 To	3 To	4 To	5 To	6 To	7 To	8 To	9 To
0	0	4	9	13	17	22	26	30	35	39
1	44	48	52	57	61	66	70	74	79	83
2	88	92	97	101	106	110	114	119	123	128
3	132	137	141	146	150	155	159	164	168	173
4	177	182	186	191	195	200	205	209	214	218
5	223	227	232	237	241	246	251	255	260	264
6	269	273	278	283	287	292	297	301	306	311
7	315	320	325	329	334	339	344	348	353	357
8	362	367	372	376	381	386	391	395	400	405
9	410	414	419	424	429	434	439	443	448	453
10	458	462	467	472	477	482	487	491	496	501
11	506	511	516	521	526	531	535	540	545	550

An Explanation of the Tables.

N° II. is for *London*; N° III. is for *Hamburgh*; if the exchange is found in the 8ths and 16ths: N° I. is for all other places; and for *Hamburgh* when the exchange is in ſhillings, $\frac{1}{2}$ ſhillings, and $\frac{1}{4}$ ſhillings, N° IV. ſerves to ſhew the numbers that muſt be added together, *viz.* all thoſe that are found on the ſame ſide.

The 5th and 6th are for profit and loſs. If it is found that the ſum of the addition of the ſide in which to find that given is leſs than the other ſum of the ſide where what is received is, it muſt be ſought for in the Table of Profit, N° V. and when there is a loſs, in that of N° VI. And that the uſe which may be made of theſe tables may the eaſier be comprehended, I ſhall here add ſome examples.

First EXAMPLE.

A. of *Amſterdam* remits on *London* to *B.* at 34*s.* $5\frac{1}{2}$ groots, what *B.* remits for the account of *A.* to *Cadiz* at $49\frac{3}{4}d.$ ſterling *per* dollar. If the merchant at *Cadiz* remits the produce on *Amſterdam* at $121\frac{1}{2}$ grts. of *Holland per* ducat of 375 maravedis; it is demanded how much *A.* hath gained or loſt excluſive of the charges.

Solution by the Tables.

He gives		He receives	
34*s.* $5\frac{1}{2}$ grts.	2654	$121\frac{1}{2}$	7335
$49\frac{3}{4}d.$	3457		7215
Fixed number	1104		
	7215		120

$2\frac{4}{5}$ *per cent.* gained.

The

The Operation.

d.	Maravedis	*d.*
If $49\frac{3}{4}$	272	240 will give $1312\frac{32}{199}$ Maravedis.
Mar.		
If 375	$121\frac{1}{2}$ grts.	$1312\frac{30}{199}$
	2	
	243	11810
	2	11821
		1312
		261120
		119

Now the 2d and 3d terms multiplied, and divided by the firſt in the order they now ſtand, will be expreſſed as follows.

$\frac{243\times261120}{2\times199\times375}$, which gives 425 groots.

Now the difference between 34*s.* 5 gts. $\frac{1}{2}$ and 425 gts. is $11\frac{1}{2}$ gts. therefore $\frac{11\frac{1}{2}\text{ gts.}}{34s.\ 5\frac{1}{2}\text{ gts.}} \times 100 = \frac{23}{827} \times 100 = 2\frac{8}{10}$ nearly.

By the Double Rule of Three.

d.	M.	*d.*	Groots.	Mar.
$49\frac{3}{4}$	375	240	$121\frac{1}{2}$	272
4			2	
199			243	
4			2	

You may now expreſs the laſt three terms divided by the firſt two, thus, $\frac{240\times243\times272\times4}{199\times375\times2} = 425$, as before.

Second Example.

A. of *Amſterdam* remits to *B.* of *Dantzick*, at 276 groſs of *Poland*, for one livre of groſs, the which *B.* remits on *Hamburgh* at $115\frac{1}{2}$ groſs for 48 ſhillings lubs; if *Hamburgh* remits what it amounts to, to *A.* at $33\frac{3}{16}$ ſtivres *per* daalder of 3 marks lubs: it is demanded how much *per cent.* *A.* has gained or loſt, omitting the charges.

Solution by the Tables.

A. gives $115\frac{1}{2}$	7115	*A.* receives		
No. fixed	2510	$\frac{1}{2}$ 276 is 138	7888	
	9625	$33\frac{3}{16}$	1699	
	9587		9587	

39 or $\frac{9}{16}$ *per cent.*

By

By the Rule of Three.

Groſs	Shillings Lubs	Groſs
If $115\frac{1}{4}$	48	276 will give $114\frac{54}{77}$, then
Shil. Lubs	Sti. of *Amſterd.*	S. Lubs
If 32	$33\frac{3}{8}$	$114\frac{54}{77}$.

This ordered according to the foregoing example will produce $118\frac{9}{10}$ ſtivres, which taken from the 120 ſtivres firſt given, there remains $1\frac{1}{10}$ ſtivres, therefore

S.	S.	S.
as 120	$1\frac{1}{10}$	100 to $1\frac{1}{12}$, the loſs *per cent.*

By the Double Rule of Three.

Groſs	S. L.	Groſs	Stivres of *Amſterd.*	S. L.
$115\frac{1}{4}$	32	276	$33\frac{3}{8}$	48

The fractional terms being reduced into improper fractions, as theſe in the firſt example, the operation then will be entirely ſimilar to the laſt in the ſaid example, and gives $118\frac{9}{10}$ ſtivres, as before.

Third Example.

Two perſons *A.* and *B.* at *Paris*, have occaſion for money at *Cadiz*; *A.* remits directly, and gives 18 livres 3 ſols *per Spaniſh* piſtole; *B.* chuſes the way of *Holland*, and orders to be remitted him from *Amſterdam* at $121\frac{1}{4}$ groots for a ducat of 375 maravedis; *Amſterdam* reckons $\frac{1}{2}$ *per cent.* charges, and draws for his reimburſement at the rate of $56\frac{1}{4}$ groots *per French* crown of 60 ſols; it is demanded which of the two methods proved moſt advantageous.

Anſwer; his who remitted directly.

Operation by the Tables.

A. gave $56\frac{1}{4}$	3990	*B.* gave $121\frac{1}{4}$ groots	7326
$\frac{1}{4}$ of 36 ſols is $90\frac{3}{4}$	6067	$\frac{1}{2}$ *per cent.*	22
	10057	Fixed number	2876
			10224
			10057
		Seek in Number VI.	167

$3\frac{4}{5}$ *per cent.*

Otherwiſe,

By reflecting on the nature of the queſtion, it appears, that what *Amſterdam* reckons for charges may be conſidered to increaſe the number of ſols ſo much more than *B.* would otherwiſe have paid for the 375 maravedis; therefore firſt ſay, if 100 —— $\frac{1}{2}$ —— 60, or if 10 —— $\frac{1}{2}$ —— 6, or if 5 —— $\frac{5}{10}$ —— 3 muſt give $\frac{3}{10}$, which *B.* muſt pay at *Amſterdam* for his charges for every 60 ſols in the value of the 375 maravedis. But inſtead of finding the ſols *B.* muſt pay, excluding the charges, and then computing the charges,

charges, and adding them to the ſols laſt found for *B*'s whole payment, you may by parity of reaſon ſay,

Groots		Sols		Groots
As $56\frac{1}{4}$	——	$60\frac{3}{10}$	——	$121\frac{1}{4}$ to $129\frac{49}{50}$ ſols paid by *B.*

for a ducat. Laſtly, to compare whether *A.* or *B.* has ſucceeded beſt, ſay,

£. s.		the Maravedis in a Piſtole		Sols
If 18—3	——	1088	——	$129\frac{49}{50}$ will give 389

maravedis, which *B.* would have got inſtead of 375, had he changed as *A.* did; therefore it is manifeſt, that in receiving only 375 he had leſs than *A.* for the ſame ſum of *Paris* money by 14 maravedis; and to make a calculate *per cent.* it will be as

Mar.		Mar.		
375	——	to 14.	——	100 to $3\frac{7}{15}$, the anſwer.

Fourth Example.

A merchant of *Hamburgh* orders us to draw for his account on *Dantzick*, at 270 groſs of *Poland* for 1 livre de groſs, and to remit the amount on *London* at 25 ſchillings *per* pound ſterling, or at other rates, which may be more advantageous for him, provided he can draw on *Dantzick* at 261 groſs of *Poland*; it is demanded at how much he ought to remit to follow the laſt order? Anſwer, at 36 ſchillings $2\frac{1}{2}$ groots.

Solution by the Tables.

Take the half of the groſs of *Poland* according to the order, and the exchange will be 135 and $130\frac{1}{2}$

Order {	135	7793
	35 ſchil.	2721

10514
$130\frac{1}{2}$ 7645

2869 this muſt be ſought for in the Table for *London*; and the ſchillings and groots of groſs, which correſpond with this number will be found to be 36 ſchillings $2\frac{1}{2}$ groots.

By the Rule of Three.

In this queſtion it is obvious that as the groſs of *Poland* given for a livre de groſs decreaſe, the ſchillings given for a pound ſterling muſt proportionably increaſe, to follow the condition of the laſt order; hence the queſtion is an inverted one in the Rule of Three, and thus ſtated.

Groſs of *Poland*		Schillings		Groſs of *Poland*
If 270	——	35	——	261, wherefore

$\frac{270 \times 35}{261}$ gives 36 ſchillings, and the remainder multiplied by 12 for groots, and the next by 2, for half groots, at each time dividing by 261, brings out $2\frac{1}{2}$ groots nearly.

Fifth Example.

There is an order to *A.* of *Amſterdam* to draw on *Paris* at $53\frac{8}{4}$ groots *per* crown, and remit on *London* at 34 ſchillings 1 groot *per* pound ſterling, or at other prices which might be as profitable to him who gave the order. If they can draw at $56\frac{1}{4}$ and remit at 34 ſchillings $7\frac{1}{2}$ groots; it is demanded whether he can comply with this commiſ-

ſion,

ſion, and how much this differs *per cent.* Anſwer, our correſpondent receive more than he firſt ordered about 3 *per cent.*

Solution by the Tables.

			S.	Groots	
34 Shil.	1 groot	2606	34	$7\frac{1}{2}$	2675
$56\frac{1}{4}$ Pence		3990	53	$\frac{1}{4}$	3793

A. receives by the exchange 6596 and by the order 6468
6468

128 ſeek in the Table of Profit, and you will find about 3 *per cent.*

By the Rule of Three.

Groots S. Groot Groots Sch. Groots
As $53\frac{3}{4}$——34 1——$56\frac{1}{4}$ to 35 8 the rate at which *A.* might remit *per* pound ſterling to *London*, when he drew on *Paris* at $56\frac{1}{4}$ groots *per French* crown; but he only remitted at 34*s.* $7\frac{1}{2}$ grts. therefore in remitting this laſt ſum he gained 1 ſchil. $\frac{1}{2}$ grt. the difference between 35 ſchil. 8 gts. and 34 ſchil. $7\frac{1}{2}$ gts. and to find what that comes to *per cent.* ſay,

Sch.	Grts.	Grts.	Grts.
If 34	$7\frac{1}{2}$	$12\frac{1}{2}$	100 will bring out the anſwer.

Sixth EXAMPLE.

There is an order to draw on *Frankfort* 100 rixdollars current money of *Amſterdam* for $128\frac{3}{4}$ rixdollars of *Frankfort*, and to remit on *London* at 35 ſchillings bank money *per* pound ſterling, on condition that the *agio* ſhall be 5 *per cent.* If after this our correſpondent writes to us, to omit executing his order, if not already done, unleſs he receive 2 *per cent.* more from *London* than he had ordered: If they can only draw on *Frankfort* at 135 rixdollars that money for 100 rixdollars of *Amſterdam*, it is demanded, at how many ſchillings the remits muſt be made to follow the laſt order? Anſwer, 34 ſchillings $4\frac{1}{3}$ groots.

Solution by the Tables.

$128\frac{1}{2}$	7586	135	7793
5 *per C.*	212	2 *per C.*	86
35 ſchil.	2721		
	10519		7879
	7879		

2640 This number ſeek in the Table for *London*, and you will find 34 ſchillings $4\frac{1}{3}$ groots correſpond thereto.

For a different ſolution, it is eaſy to conceive that when the *agio* is high the leſs *Frankfort* money is given for current money of *Amſterdam*, the exchange being by banco money, conſequently the leſs banco money muſt be remitted to *London per* pound ſterling; whence it is clear, that the way to get 2 *per cent.* from *London* by remitting at the ſame rate as before, you muſt conſider the *agio* as ſo much leſs; therefore inſtead of 95, we have 97 rixdollars banco money of *Amſterdam* for $128\frac{3}{4}$ rixdollars of *Frankfort*, at which rate I find the bank money of *Amſterdam* equal to 135 rixdollars of *Frankfort*, thus,

Rixd. of *Frank.* Rixd. Banco of *Amſt.* Rixd. *Frank.*
If $128\frac{3}{4}$ 97 135 will give
$101\frac{73}{103}$. But by the queſtion there are only 100; therefore the remittance on *London* muſt be made accordingly leſs, by ſaying,

Schil. Banco Rixd.
As $101\frac{73}{103}$ 35 100 to the ſum ſought.
103

306
1017

Sch. groots.
10476 Now $\frac{35 \times 100 \times 100}{10476}$ will give 34 $4\frac{2}{1}$ the anſwer.

Seventh Example.

T. of *Berlin* remits for his proper account to *U.* of *Amſterdam*, a certain ſum of bank money, at 133 rixdollars for 100 rixdollars bank money of *Amſterdam*, ordering him to remit the nett produce to *A.* of *Genoa*; *U.* effects it at 96 groots *per* dollar of 5 *Genoeſe* livres. *A.* on his part remits this to *B.* who lives at *Turin*, at 128 ſols of *Piedmont* for one crown of *Genoeſe* money of $7\frac{3}{5}$ livres, who takes bills on *Geneva* at 84 *Piedmont* ſols for one crown current of *Geneva*, and remits them to *C.* who in his turn remits the amount on *Frankfort* to *D.* at 130 rixdollars of *Frankfort* for 100 crowns current of *Geneva*, who finally takes bills at 132 batz money of *Frankfort* for one pound ſterling, 1 rixdollar at *Frankfort* makes $22\frac{1}{2}$ batz, the which he remits to *T.* himſelf: If the five commiſſioners, namely, *U. A. B. C.* and *D.* deduct each $\frac{1}{2}$ *per cent.* for their proviſion; it is demanded at what rate the exchange muſt be between *Berlin* and *London* ſo that *T.* gains 3 *per cent.* Anſwer, $6\frac{1}{43}$ rixdollars *per* pound ſterling.

Solution by the Tables.

133	7728		128	7561
96	6312		130	7628
84	5732		Numb. fixed	8193
132	7695			23382
3 *per* C.	128			
5 Proviſions at $\frac{1}{2}$ *per* C. each	73			
	27668			
	23382			

4286 This ſought in Table I. there will be found $60\frac{5}{24}$, wherefore take $\frac{1}{10}$ and it ſhall be your anſwer, $6\frac{1}{43}$ rixdollars.

Otherwiſe

Otherwiſe.

The general method for ſuch extenſive queſtions is as follows: The inveſtigation whereof I ſhall clearly ſhew before I conclude this ſubject.

1 Pound ſterling at *London* = 132 Batz money of *Frankfort*.
22½ Batz money of *Frankfort* = 1 Rixdol. money of *Frankfort*.
100 Rixdol. money of *Frankfort* = 99⅔ Rixdol. mon. the proviſion deducted.
130 Rixdol. money of *Frankfort* = 100 Crowns current of *Geneva*.
100 Crowns current of *Geneva* = 99⅔ Crowns current at *Geneva*, the proviſion deducted.
1 Crown current of *Geneva* = 21 84 Sols of *Piedmont* at *Turin*.
100 Sols of *Piedmont* = 99⅔ S. of *Piedmont*, the proviſion deducted.
84 128 Sols of *Piedmont* = 1 Crown of *Genoa*.
1 Crown at *Genoa* = 152 Sols of *Genoa*.
20 Sols at *Genoa* = 1 Livre at *Genoa*.
100 Livres at *Genoa* = 99⅔ Livres at *Genoa*, the proviſion deducted.
5 Livres at *Genoa* = 3 96 Groots banco of *Amſterdam*.
100 Groots banco of *Amſterdam* = 1 Crown of *Amſterdam*.
100 Crowns banco of *Amſterdam* = 99⅔ Crowns banco of *Amſterdam*, the proviſion deducted.
100 Crowns banco of *Amſterdam* = 133 Rixdol. of *Brandenburgh* at *Berlin*.
how much = 1 Pound ſterling at *London*.

22½
13
66
226½
292½
2
585
5
2925
100
292500
100
29250000
100
2925000000
100
292500000000
100
29250000000000
100
2925000000000000
100
292500000000000000

133
99⅔
1197
1197
44⅓
44⅓
13255⅔
3
39767
99⅔
3579703
3579703
13255⅔
13255⅔
3963444⅓
152
7926888
19827220
3963444
50⅔
602443538⅔
99⅔
542199842
542199842
2008145122⅔
2008145122⅔
66⅔
60043529353⅓

To be carried over.

21
7
9)147(16
9
57
54
3

132
8
9)1056(117
9
15
9
66
63
3

Brought over.
600435893533 7/3
21
60043539353
120087078706
16 1/3
1260914326429 1/3
99 2/3
11348228937861
11348228937861
420304775476 1/3
420304775476 1/3
33 2/9
125671127867456 3/9
132
251342255734912
377013383602368
125671127867456
117 1/3
16588588878504309 1/3
99 2/3
149297299906538781
149297299906538781
5529529626168103
5529529626168103
33 2/9

29250000000000000)16533|29358224262830 2/9 (5 65/100 Rixdol. of *Brandenburgh* for 1 pound sterling at *London*.
|14625|
190829358224262830 2/9
100

190829|3582242628302 2/9
17550
15329
14625
704

But to know how many rixdollars must be remitted *per* pound sterling to *T.* so that he may gain 3 *per cent.* say by the Rule of three Direct.

If 100 — 5 65/100 — 103

103
65
515
618
1|00)66|95

5 65/100
515
66 19/20
1|00)5|81 19/20 (5 91/100 Rixdollars of *Brandenburgh per* pound sterling.
100
81|95

Eighth

Eighth Example.

C. of *Genoa* remits for his own account to *D.* of *Venice*, a certain ſum at 104 marchetti for 4 livres of *Genoa*, ordering him to remit the nett produce to *E.* at *Florence*; *D.* effects it at 75 crowns d'or of *Florence* for 100 ducats of *Venice*. *E.* takes bills on *Leghorn* at 119 ſols for 6 livres of *Florence*, which he remits to *F.* who takes others on *Novi*, at 175 dollars for 100 crowns de marc of *Novi*, who remits them to *G.* who in his turn remits them to *H.* of *Milan* at 180 ſold. imp. for a crown de marc, who makes a remiſs at *Amſterdam* to *I.* of 52 ſols of *Milan*, whereof 140 are worth 106 ſoldi imp. for a guilder of *Amſterdam*, who finally takes bills on *London* at 34 ſch. *per* pound ſterling, which he remits to *C.* himſelf, for whoſe account all theſe negociations were made. If ſix of the correſpondents deduct each $\frac{1}{2}$ *per cent.* for charges, it is demanded at what price the exchange was between *Genoa* and *London*, if *C.* finds that the money he has been in diſburſe for 6 months has brought him in an intereſt after the rate of 8 *per cent. per annum*. Anſwer, $55\frac{89}{100}$ *d.* ſterling *per* dollar of 5 livres.

Solution by the Tables.

$\frac{1}{2}$ of 175 is $87\frac{1}{2}$	5909		114	6659	
52	3649		75	5240	
34	1804		119	7244	
Fixed number	9549	$\frac{1}{2}$ of 180 is	90	6031	
6 Proviſions at $\frac{1}{2}$ *per cent.* each	$130\frac{1}{2}$				
4 *per cent.* gain	170			25174	
	$21211\frac{1}{2}$			$21211\frac{1}{2}$	

$3962\frac{1}{2}$ which anſwers to $55\frac{89}{100}$

Operation for the exact Value.

1 Dollar of *Geno*
4 Genoeſe livres
124 Marchetti banco of *Venice*
1ØØ Ducats banco of *Venice*

1ØØ Ducats banco of *Venice*
1 Crown d'or of *Florence*
1ØØ Livres of *Florence*

2.6 Livres of *Florence*
2.12Ø ordinary ſols of *Leghorn*
100 *Leghorn* dollars

7.17Ø *Leghorn* dollars
100 Crowns de marc of *Novi*

1 Crown de marc of *Novi*

106 Soldi imp. of *Milan*
100 Sols current of *Milan*
52 Sols current of *Milan*

2.6. common ſtivers banco of *Amſterdam*

100 Stiv. de groſs banco of *Amſterdam*

34 Stiv. de groſs banco of *Amſterdam*
how much for
5 Livres *Genoeſe*
2.1Ø4 Marchetti banco of *Venice*
1 Ducat banco of *Venice*
$99\frac{1}{2}$ Ducats banco of *Venice*, the proviſion deducted.
3.75 Crowns d'or of *Florence*.
$7\frac{1}{2}$ Livres of *Florence*.
$99\frac{1}{4}$ Livres of *Florence*, the proviſion deducted.
119 ordinary ſols of *Leghorn*.
1 *Leghorn* dollar.
$99\frac{1}{2}$ *Leghorn* dollars, the proviſion deducted.
1ØØ Crowns de marc at *Novi*.
$99\frac{1}{2}$ Crowns de marc, the proviſion deducted.
3.18Ø Soldi imp. or ſols of Exchange of *Milan*.
24Ø Sols current of *Milan*.
$99\frac{1}{2}$ Sols current of *Milan*.
2Ø common ſtivers banco of *Amſterdam*.
1 Stiver de groſs banco of *Amſterdam*.
$99\frac{1}{2}$ Stivers de groſs banco of *Amſterdam*.
6 24Ød. Sterling of *London*.
1 *Genoa* dollar.

124
2
248
106
1488
2480
26288
34
105152
78864
893792000000000

99
3
16) 297 (18
16
137
128
9

21
7
32) 147 (4
128
19

54
5
64) 270 (4
256
14

99
3
8) 297) 37
57
1

119
5
16) 599) 37
48
115
112
3

99½
6
597
99½
5373
298½
59401½
99½
534609
534609
29700
49¾
5910449¼
99½
53194041
53194041
2955224½
24¾
⅛
5880897003/8
99½
5292807300
5292807300
294044850 3/16
37⅛
585149251875/16
119
526634326683
585149251873
585149251837 3/16
6963276097290 3/16
99½
6266948487561 0
6266948487561 0
348163804864 5 3/32
18 9/16
6928459716803 73 21/32
7½
4849921801762611
3454229858401861/2
4 19/32
21/64
5196344787602802 27/64

To be carried over.

Brought over.
$519634478760280 2\frac{27}{64}$
2

$1039268957520560 4\frac{54}{64}$
5

$51963447876028024\frac{14}{64}$

$51963447876028024\frac{14}{64}$ *d.*

893792,000000000)51963447,876028024$\frac{14}{64}$($58\frac{11}{100}$ *Sterling for a Genoa dollar.*
4468960

7273847
7150336

123511.87
893792

3413261
2681376

731885

After having found the exchange, which is here between *London* and *Genoa* $58\frac{12}{100}$*d.* ſterling for a dollar, it muſt be ſeen how much *per cent.* ought to be gained by the exchange, which the example tells us is 8 *per cent. per annum.* We ſee, beſides this, that *C.* has been in diſburſe 6 months; ſo it ought to be worked by the direct Rule of Three, and ſay,

If 12 months gain 8, how much ſhall 6 gain?
2 4

The anſwer will be 4, that is to ſay 4 *per cent.*

Afterwards there is to be obſerved what has been ſaid before of the certain and uncertain price, and of the direct and indirect rule in our example. *Genoa* gives the price certain, then it muſt give to *London* 4 *per cent.* leſs than it has received, and conſequently it muſt be wrought by the indirect Rule of Three, and ſay,

If 100——give $58\frac{13}{100}$*d.*——how much ſhall 104 give?
100

104)5813(Anſwer, $55\frac{89}{100}$*d.* ſterling for a *Genoa* dollar.
520

613
520

93
100

9300
832

980
936

44

Having

Having ſolved the two preceding problems in the moſt conciſe method that I believe is poſſible, except by tables; I ſhall now demonſtrate in their explanation how to perform, in the ſame manner, all queſtions relative to arbitrations. And firſt, I ſhall deduce the rule for ſtating them from the ſecond example of the double rule of three preceding the tables, where the firſt term is fixed; the ſecond ſhewing what different money was given for it; the third, how much of the ſame ſpecie as the ſecond is given for the fourth; then what quantity of the ſpecie of the fourth, for a fifth term given, which is of the ſame name as the firſt term. Now as all ſuch queſtions, exceeding five given numbers, may according to that exceſs be called queſtions of the treble, quadruple, quintuple, &c. rule of three, for whoſe ſtating I derive the rule from the foregoing remark, which will be exactly ſimilar or agreeable to it; only I ſhall, for brevity's ſake call the firſt term, the firſt antecedent; the ſecond term, the firſt conſequent; the third term, the ſecond antecedent; the fourth term, the ſecond conſequent, &c. and now expreſs the rule.

The firſt antecedent muſt be a fixed exchange, and of the ſame denomination with the laſt conſequent; the ſecond antecedent muſt be of the ſame name as the firſt conſequent; the third antecedent of the ſame ſpecie as the ſecond conſequent, and ſo on, always making the antecedents of the ſame name or ſpecie as their preceding conſequent, which you cannot but do if you follow the conditions of a given queſtion, and if you have ſo done you will find your laſt term of the ſame ſpecie with the firſt, and then the demand or anſwer will be of the ſame name as the laſt conſequent but one: if you find your work ſtand otherwiſe, moſt likely you have miſtaken the firſt term. The queſtion being thus prepared, it is plain that the ſum of the antecedents muſt be regarded as equal to the ſum of their conſequents, as each antecedent is ſuppoſed equal to its reſpective conſequent; therefore their products muſt be accordingly ſo; for inſtance, if

5 = 2 more, 3 and
6 more 4 = 10, and
7 more 5 = 8 more 4

then 5 × by both 6 and 4, × by both 7 and 5 = 600 = 10 × by both 2 and 3, by both 8 and 4;

but as one of the antecedents in every queſtion is unknown, whilſt all the conſequents are otherwiſe, we have an unknown, though ſuppoſed, quantity multiplied by the known antecedents, = to the product of the conſequents, therefore the unknown quantity, or anſwer, is found by dividing the product of the conſequents, multiplied by one another, by that of the antecedents, multiplied in the ſame manner. For example; ſuppoſe the caſe were, what unknown quantity × by 59 would be equal to 472, then I ſay 472 divided by 59 gives the ſought quantity, viz. 8. Now in order to contract the work, it is plain that it is the ſame thing whether you divide a product, which had divers multiplicators, or you divide one of the multiplicators, which will admit it, by *that* number, and then multiply by the reſt $\left(\text{Inſtance } \frac{2\times 3\times 12}{6} = 12 = \frac{12}{6}\times 2\times 3\right)$ It is likewiſe evident, that if any two numbers be divided by the ſame number, their quotients will be in the ſame proportion as the numbers were. Inſtance 12 divided by 4 is 3, and 20 divided by 4 is 5; wherefore as 3 is to 5, ſo is 12 to 20; which was to be ſhewn. Hence it follows, that, if when a queſtion is ſtated you can divide any antecedent and conſequent, though they are not oppoſites, by the ſame number, the equality is ſtill kept up; and thus you muſt continue to do, till you can find no antecedent and conſequent commenſurable by the ſame number, then ordering this laſt equation as above directed, you will have the ſolution; and *note*, that the laſt conſequent, to which the anſwer is ſought, is ſubject to the diviſion as the reſt; for the product of the laſt, multiplied by the other conſequents, is ſtill the ſame, whether the laſt or any other is divided by the ſame number; this may be ſeen by the laſt inſtance but one, if you call 12 the laſt conſequent; and from what has been ſaid, I infer, that every antecedent after the firſt muſt be of the ſame denomination, as well as the ſame ſpecie, as its preceding conſequent; and that if any antecedent or conſequent conſiſts of different denominations, you muſt, to retain the equality, either reduce both them and their reſpective conſequents and antecedents into the

the ſame denomination, or otherwiſe make the lower denomination an aliquot part or parts of the higher, as 3*l.* 3*s.* ſterling would be $3\frac{3}{20}$ and then the others remain unaltered; and *note*, that in the ſecond given *examples*, where the antecedents and conſequents are ſcratched, they have been divided, and the quotients ſtand towards the left, ſeparated by a point, *thus*, 4. 228; and what has been here ſaid in regard to the queſtions of money, holds good alſo for thoſe concerning weights and meaſures, which may be wrought exactly by the foregoing rules.

EXAMPLE.

If 100lb. at *London* be equal to 106lb. at *Lyons*, and 30lb. at *Lyons* are worth 32lb. at *Paris*, and 113lb. at *Paris*, made 90lb. at *Frankfort*, and 12lb. at *Frankfort* are given for 18lb. at *Venice*, and 125lb. at *Venice* are the value of 97lb. at *Cadiz*; then how many lb. at *Cadiz* are equal to 60lb. at *London*? Anſwer $51\frac{7}{10}$

Being ſtated and contracted according to the preceding rules, the work will ſtand thus:

100 lb.	at *London*	=	106 lb.	at *Lyons.*
5. 30 lb.	at *Lyons*	=	4.32 lb.	at *Paris.*
113 lb.	at *Paris*	=	3.90 lb.	at *Frankfort:*
1. 4 12 lb.	at *Frankfort*	=	3.28 lb.	at *Venice.*
19. 125 lb.	at *Venice*	=	97	at *Cadiz*, then
how many lb.	at *Cadiz*	=	60	at *London.*

113	106
5	3
565	318
19	3
5085	954
565	97
10735	6678
Diviſor	8586
	92538
	6
	555228
	Dividend

10735) 555228 (51.7 Anſwer.
53675
18478
10735
77430
75145
2285

If 100 ells at *Amſterdam* are equal to 120 ells at *Hamburgh*, and 30 ells at *Hamburgh* make 21½ ells at *St. Gall*, and 86 ells at *St. Gall* are equal to 60 ells at *Geneva*, and 15 ells at *Geneva* are worth 28 ells at *Dantzick*; *Quere*, How many ells at *Dantzick* are equal to 45 ells at *Amſterdam*? Anſwer 50$\frac{4}{15}$.

5. 100 Ells at *Amſterdam*	=	2. 4. 120 Ells at *Hamburgh*.
30 Ells at *Hamburgh*	=	21½ Ells at *St. Gall*.
43. 86 Ells at *St. Gall*	=	3. 60 Ells at *Geneva*.
15 Ells at *Geneva*	=	28 Ells at *Dantzick*.
How many Ells at *Dantzick*	=	3. 43 Ells at *Amſterdam*.

43
5
215

21½
2
43
3
129
28
1032
258
3612
3
215)10836(50,4 Anſwer.
1075
860
860

With the preceding, I finiſh the examples of arbitrations, having therein given an inſtance of every caſe that can happen in this curious branch of arithmetick, ſo that any addition would be ſuperfluous, and unneceſſarily encroach on my reader's time, without adding any thing to his inſtruction; which I believe he will find more truly promoted in this ſhort tract, than he would by conſulting the many volumes publiſhed on the ſubject; as he has here the reaſons for all the operations propoſed, added to the ſolutions, which other authors have contented themſelves with giving alone.

I have only one remark to add to this chapter, which is, that thoſe who are well ſkilled in this buſineſs generally agree to ſupport their correſpondent's commiſſion free on all ſides; wherefore, when it is conſidered what opportunities the merchant, or remitter of general credit and correſpondence has, the benefits, by a judicious combination, or compariſon of the exchange throughout *Europe*, are far more conſiderable than moſt people imagine. Thoſe, who are ſhrewd exchangers themſelves, generally make choice for theſe negociations of correſpondents not leſs ſo; and then they are certain of the profits they have in view, for they know that their orders will lie by unexecuted till the advantageous criſis arrives.

Concerning

Ex. J. M.

Pages 141 to 153 omitted
" 163 to 172 repeated

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